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Justice is the Staff of Peace, and the Maintenance of Honour. Cic.

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To the RIGHT HONOURABLE,

Sir *HENRY MOUNTAGUE*, K^t.

Lord Chief Justice of the Pleas, holden before the KING'S MAJESTY.

My Honourable good Lord.

AFTER I had spent many Years in the Study of the Laws of this Realm, and was called to the Ministration of *Justice* in my Country, I thought it not sufficient to apply my self only to the Precepts and Directions of former Times, but to observe such new Accidents as daily happened within my Experience, the better to perform the Duties of my Place. Whilst I thus endeavoured my self, I observed that *Justices* of Peace in their Places grew in Neglect; and many Times were over-swayed by superior Sollicitations, and sometimes so disgraced, that I could have been content rather to have sat down in Quiet, than with Study and Pains to incur such Hazards and Discontentments. But again, whilst I stood thus doubtful, it pleased the Fountain of Justice (I mean, His *Royal Majesty*) so to grace, and to shew his high Esteem of the Authority of *Justices* of Peace, not only (in his Majesty's late Speech in the *Star-Chamber*,) valuing them with the nearest employed about him, but (to the great Honour of this Realm, and of the Government thereof) also establishing this Country Government by *Justices* of Peace in his Majesty's Native Country of *Scotland*; so as I saw the Current of Justice to run clear through the Land, and my self to receive new Vigour and Encouragement: Whereupon I began to recollect my confused Notes and Observations, willing, for my private Help, to digest them into some Order and Method, such as my Understanding could best contrive. Thus prepared, I yet questioned with my self, whether it were better to adventure the Publishing of these my Labours, or to keep them for my private Use. In this unsettled Consultation, being brought unto your

a

Lord^a

The Epistle Dedicatory.

Lordship by my good Friend, (who also discovered to your Lordship this my Labour) and finding your Lordship favourably to respect me and it, I took Encouragement to put the same in Print, after I had obtained (according to my humble Suit) your Lordship's Favour for Allowance and Patronage thereof.

Now it remaineth farther, to crave of your Lordship, not only for my self, but for all that shall uprightly labour in this justiciary Course, that we may receive from your Lordship such Encouragement, as that we may undergo the Charge imposed upon us, without Fear of Oppositions, or other Disturbances. So by your Lordship's Favour and Means shall Justice be the more duly administered, and his Majesty's Peace be the more firmly maintained, to the Honour and Safety of the King's Majesty, and the good and peaceable Government of all his Subjects. And so his Majesty will no Doubt proceed (as he hath begun) still to increase your Honour, for your Care in honouring him, and his Royal Throne thereby; and the People, who shall feel the Benefit of your Zeal for Justice, will heartily pray for your Happiness; and God, beholding how you make Justice and Peace go together, will, according to his abundant Mercies, give you the everlasting Reward of Justice and Peace: For all which I will continually pray, and besides, rest

Your Lordship's in all Humility

And Duty ever to be commanded,

MICHAEL DALTON.

To

TO THE RIGHT WORSHIPFUL,

Sir JAMES LEE, K^t.

The King's Attorney of his Court of *Wards* and *Liveries*; and to the Right Worshipful, and my very good Uncle, *Thomas Spencer, Esq*; and to the Residue of my Masters of *Lincoln's Inn*.

IT may seem strange, that after so many learned Writers in this Kind, I (a Man of so weak Parts) should presume to offer to the View of the World a Work of this Nature: Yet my Reasons being considered with indifferent Favour, I hope to be excused not only with you, but with all others who are Lovers of their Country, and seek the Peace thereof. I confess my self a long, yet an unprofitable Member of your Honourable Society; but seeing that my Calling is to a Country-Life, and considering that he who is of the meanest Condition, and hath the smallest Talent, may not (without just Reprehension) retire himself so to his private Pleasure or Profit, as that he should neglect to shew some Fruit and Token of his Love to his Country, (lest therein the Heathen Philosopher might justly condemn him, who said, *Non solum nobis nati sumus, sed partim Patriæ, &c.*) I have been the bolder, according to my small Power and Capacity, to offer this my Mite into the Treasury of my Country; this Work (whatsoever it be) being written first as private Notes for my particular Help in this Business, wherewith my self and many others are daily employed, without yielding any Pleasure or Profit at all to us, otherwise than for the publick Good.

The Sweet of like Labours you, my great Masters, (which I do most gladly behold) do from Time to Time reap more fully, rising daily to great Honour and Wealth, through your Wisdoms, Deserts, and great Pains. That which remaineth to us Country-Justices (for the most Part) is the Wearying of our selves, the Spending of our Time, and Estates, ut alii inde pace fruuntur, being requited many Times not only with much evil Will from or by the Means of such as we have in Justice to deal withal, but oftentimes also rather disgraced than encouraged by some in higher Place.

I speak not this without acknowledging it to be both just and meet, that the Actions and Proceedings of the Justices of Peace should be well and duly looked into, and themselves punished, when through Malice, or other Corruption, they shall do unjustly: But if through unwilling Ignorance they happen to err, they are rather to be better informed than ill intreated. *Nemo nascitur sapiens, & humanum est errare.*

I am bold to write unto you, my worthy Masters and Friends, and the rest of this Honourable Fellowship, knowing that there are many among you rising to great Places, whose Honour it will be to maintain the Life of the Law, and Justice of the Realm, in causing due Executi-

The Epistle.

on thereof to be had and done; redressing the Abuses and Defects thereof, and encouraging such as shall carry themselves juste, fideliter, & sincere: Again, that there are many among you of great Learning and Judgment, by whom this my imperfect Work may, and I hope shall be more published and perfected. And seeing some others amongst you whose Fortunes prove (as mine doth) to withdraw themselves into their Countries, I would gladly encourage them to employ their better Talents to the common Good.

I acknowledge there are divers Books in this Kind more Learned and Methodical; but withal I observe the Business of the Justices of Peace to consist partly in Things to be done by them out of their Sessions, (and sometimes privately, and upon a sudden, without the Advice or Association of any other) and partly at their Sessions of the Peace. Of Things of this last Kind I purpose not in this Treatise to meddle, for that at such publick Meetings and Assemblies they are far more able to direct themselves: But for the private and sudden Help of such Justices of Peace, who have not read over the former Writers, and if they have, yet the Multiplicity of Statutes (whereupon the Office and private Practice of Justices of Peace doth principally consist) is such, and at every Parliament so altered, by Expiration, Discontinuance, and otherwise, as that it is a Work very hard and laborious for Gentlemen not conversant in the Study of the Laws (although otherwise very industrious) to proceed as by the Commission they ought and are prescribed, *sc. secundum Leges & Statuta Regni*; upon these Considerations, and for their Ease principally, I have published this Work; knowing that there are divers, both Honourable and Worthy Persons in the Country, some of whom for want of Knowledge of the many particular Statutes in Force, and Tedioufness of the Study of them, do seek to be exempt out of the Commission of the Peace; others being in, do forbear to meddle, or meddling do not that good Service therein which they are desirous to do. I have herein endeavoured to set down Things so plainly and briefly as I could, with Reference to the Statutes abridged, whereby the Reader may the better resolve and satisfy himself, what he ought to do in every particular almost that should come before him, or them, out of their general Sessions of the Peace. And yet for that in Cases of Ambiguity, *Satius est fontes petere quam sectari rivulos*, I could wish all Justices of the Peace to have ready by them the Statutes at large, as well as the Abridgments, and to use this Book or the Abridgments of the Statutes, as Tables and brief Memorials, but to trust and ground themselves upon the Books at large.

I am now only to intreat your Favours: And Although I might rest confident by the honourable Patronage I have obtained of him, whose high Place and Presidency for Matters of Justice and judicious Understanding drew me to covet the same, (and not a little induced thereto, in Regard of the near Alliance by Marriage into the honourable House of the Spencers;) yet withal I could not, out of that Duty and Love which I owe to this Honourable Society, (my first Breeder in the Studies of the Law) and Hope of your tender Respect, to uphold the Credit of an affectionate Member of your Society, but be bold also to crave your farther Countenance in these my Labours; and that you would be pleased to accept this loving Remembrance as a thankful Gratitude to you, to whom I must ever acknowledge my self deeply obliged, and ever to rest at your Commands.

MICHAEL DALTON.

TO THE READER.

IT is a Complaint, as antient as the Reign of *Henry* the Seventh, that the Office of a Justice of Peace was a great Burthen, in regard they were charged with the Execution of so many Statute Laws; whereas the Statutes touching Riots, Forcible Entries, Labourers and Liveries were then the greatest Part of their Work: More justly and reasonably may the Complaint be made at this Day, because the Execution of most Statutes is by expresse Words made the Duty of the Justice of Peace, and the Conviction of Offenders against the same put into the Power and Trust of one or two Justices, and that out of Sessions. A moderate Referring of Things to their Cognisance by Statutes, is as antient as their Constitution, which is thought not to go higher than the Time of *Edward* the Third. And Things then cognisable by them, were for the most Part determinable in their Sessions, and that by that antient and legal Course of Indictment. But to hear and determine upon View, or by Witnesses, or by Discretion, was rare and unusual, (unless in case of Riots and Force, which threatned the Government,) until the Time of *Henry* ^{11 H. 7.} the Seventh, in whose Reign it grew common; and that Statute was made for Justices of Peace by Information to hear and determine all Offences against Penal Statutes, except Treason, Murder and Felony: And what the Effects were thereof, the very Naming *Empson* and *Dudley* will suggest to any one's Memory, who is in any Measure acquainted with the History of that King's Reign; in the later Part of whose Reign it grew common to intrust the Justices of Peace with great Authority; nay, at length they shared not only of the Power, but the Benefit too.

To the READER.

For by the Statute 19 H. 7. c. 11. they have not only Power to convict upon, and by Examination, such as offend in taking *Deer and Herons*, but are also to have a Part of the Forfeiture for their Pains. Since the Reign of which wise, but covetous Prince, that absolute discretionary Power hath been enlarged by many Statutes; the Growth and Increase of whose Authority both in and out of Sessions, you may at one View perceive in a Table, or Particular, prefixed to this Book, of such Statutes as are in their Power to execute by Virtue of expresse Words therein contained; whereby in very many Cases, in Matters both of Liberty and Property, that fundamental Course of Accusation by Indictment, and Conviction after Issue joined by Verdict of twelve Jurors, and of Judgment given in open Court on mature Deliberation, Concurrence of Opinion, and publick and solemn Determination thereof, are in a great Measure abrogated; and how far a Delegation of such Authority may tend to the Subversion of both Liberty and Property, by rendering useless the antient Way and Method of Accusing, Convicting, Judging and Punishing Offenders, 'tis not within my Capacity to discern; but others that can, may prevent it, if there be apprehended any Danger from the same. The great Additions to the Justices of Peace their Jurisdiction first occasioned the Learned Author Mr. Dalton's Writing this Book; and because they when private, or but few, were worst to help, he composed it for their Aid, thereby declaring their Duty out of Sessions, which he hath done with singular Pains, Care, Integrity and Judgment.

*Resolutions
of the
Judges.*

But the Statutes still increasing their Authority, and the learned Author's Work proving very useful, many Editions of this Book have been, and on Pretence of a further Benefit hereby, some Additions, with little Care and as little Judgment, have been made to it, of late Statutes therein abridged, and of the spurious, and falsely so called Resolutions of the Judges, and some few other Matters.

And now all former Editions of this Book, being either spent or not sufficing, there is attempted in this present Impression, to make it further useful, not only an Insert-

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To the READER.

ing under proper Titles the Statutes made since Mr. Dalton's Time, abridged with some Care and Pains, in which Justices of Peace have to deal as well out of Sessions as in their Sessions; as also wherewith the Justices had to do in their Sessions, before Mr. Dalton first published his Book, and with which he purposely medled not, it being not his proposed Task; as also some Things touching their Sessions, and their Proceedings therein.

'Tis especially provided for herein, that those Statutes that are either discontinued or repealed, may be through this Treatise taken Notice of. I shall here insert the Statute 17 Car. 2. c. 4. by which, all Statutes and Acts of Parliament which had their Continuance, or were, by an Act made in the third Year of King Charles the First, ^{3 Car. 1.} Intituled, [*An Act for Continuance, and Repeal of divers Statutes,*] continued until the End of the first Session of the next Parliament, should by Virtue of that Act, be adjudged ever since the Session of Parliament in the said 3d Year, to have been of such Force and Effect, as the same were the last Day of that Session; and from thenceforth, until some other Act of Parliament be made touching the Continuance or Discontinuance of the said Statutes and Acts in the said Acts so continued. Of which are 1 Eliz. 17. made perpetual, and the rest are Fifty-seven in Number; whereof,

3 & 4 E. 6.	31 El. 1.	1 Jac. 31.
c. 21.	39 El. 4.	3 Jac. 9.
21 Jac. 22.	1 Jac. 25.	3 Jac. 10.
5 El. 5.	39 El. 2.	3 Jac. 11.
8 El. 10.	39 El. 17.	3 Jac. 13.
13 El. 21.	43 El. 2.	7 Jac. 1.
14 El. 5.	43 El. 3.	7 Jac. 4.
18 El. 3. &	43 El.	7 Jac. 11.
3 Car. 2. c. 4.	1 Jac. 25.	7 Jac. 13.
18 El. 20.	3 Car. 1. c. 4.	25 H. 8. 11.
3 & 4 E. 6.	1 Jac. 7.	21 Jac. 18.
10.	1 Jac. 22.	4 Jac. 2.
27 El. 14.	1 Jac. 27.	21 Jac. 20.
27 El. 24.	1 Jac. 6.	1 Car. 1. c. 1.

In

To the READER.

In all, Forty Acts, do relate to the Justice of Peace his Authority, I thought it convenient to mention them here, lest the Reader finding any of these Statutes to be at the first but Temporary, should not presently find how they stand continued, the said Clause of Continuance being put in the later End of a Subsidy Act, where one would least look for it.

In this Edition it was not thought requisite to add any new Chapters, tho' there are many new Titles in it, which are severally referred to such Chapters which treat of Matters of the like Nature, and the Additions must necessarily be very considerable, because every Thing relating to the Office of a Justice of Peace is brought down to this present Year 1726.

And lastly, All the Statutes expired or repealed since the last Edition, and all obsolete Words, Phrases and Repetitions are now left out, and the whole reduced into our Modern Language, with a new Table of all the Principal Matters and Things herein contained: And some Alterations are made in the Precedents which were drawn by Mr. Dalton, and founded on such Statutes which were in Force when he wrote.

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For the better Use of this Book, and finding out of the Authors herein alledged, you must observe these short Directions hereunder following.

- F.** For *Fitzherbert*. He was sometimes one of the Judges of the *Common Pleas*.
Br. *Brook*, sometimes Lord Chief Justice of the *Common Pleas*.
Dyer, late also Lord Chief Justice of the Court of *Common Pleas*.
Dir. Certain Directions or Resolutions of all the Judges of Assizes, *Anno* 1633. and imprinted for *William Coke*, *Anno* 1636.
Co. Sir *Edw. Coke* Knight, late Lord Chief Justice of the *King's Bench*, &c. *His Books of Reports*.
Co. Li. Sir *Edw. Coke's* First Part of *Institutes*, &c. upon *Littleton*.
Fi. M. *Henry Finch*, *Apprentice del Ley*
Plow. Master *Plowden's* Commentaries.
Rast. *Rastal's* Abridgment of the Statutes, imprinted *Anno Dom.* 1583. He was sometimes one of the Judges of the *Common Pleas*.
Lib. Intr. The Book of Entries, Impress. 1596.
Lbt. or Lambt. Master *Lambert's* Justice of Peace, Impr. 1559.
P. Master *Poulton's* Abridgment of the Statutes, Impr. 1606.
Crompt. Master *Crompton's* Justice of Peace, Impr. 1606.
P. R. Master *Poulton de Pace Regis*.
Ba. Sir *Francis Bacon*, his Elements of the Common Law.
Ba. V. His Use of the Law.
Resolutions of the Judges of Assizes *Anno* 1633. to certain *Quares*,
Jones Rep. *Jones's* Reports.
Bulstr. *Bulstrode* his Reports, whereof are three Parts.
Mo. *Moor's* Reports.
And. *Anderson's* Reports, Two Parts.

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CHAP.

C H A P. I.

Of the Common Law, and of such as had, and still have, the Conservation of the Peace by the Common Law.

§. 1. *The Law of God is the Law of the Land.* 34 H. 6. 40. *Prin. Doct. & St. lib. 3. cap. 6. Fitz. 3. Co. 340. Common Law is common Reason. Vide Pl. 36. a. 67. a. 107. b. & 465. a. Co. L. 142. Co. 3. 8. & 9 Part. Preface. Fortescue c. 17. Lit. 209.*
THE Common Laws of this Realm of *England*, receiving principally their Grounds from the Laws of God and Nature; (which Law of Nature, as it pertaineth to Man, is also called the Law of Reason) and being, for their Antiquity, those whereby this Realm was governed many hundred Years before the Conquest; the Equity and Excellency whereof is such, as that there is no humane Law so apt and profitable for the Peaceable, and prosperous Government of this Kingdom, and so necessary for all Estates, and for all Causes, concerning Life, Lands or Goods, as these Laws are. And to that Purpose, at the Common Law (long before Justices of the Peace were made) there were sundry Persons to whose Charge the Maintenance of this Peace was recommended, and who with their other Offices, had (and yet still have) the Conservation of the Peace annexed to their Charges, as a Thing incident to and unseparable from their said Offices. And yet they were and are called by the Names of their Offices only, the Conservation of the Peace being included therein.
 First, The King (by his Dignity Royal) is the Principal Conservator of the Peace within his Dominions, (and is *Capitalis Justitiarius Anglie*) in whose Hands the Administration of all Justices and all Jurisdiction in all Causes first was; and afterwards by and from him only was this Authority derived and given to others.

And yet so, as that whatsoever Power is by him committed unto other Men, the same remaineth still in himself; insomuch that he may himself in Person sit in Judgment, as in ancient Times Kings here have done, and may take Knowledge of all Cases and Causes, unless they concern himself; for in such Cases wherein the King is a Party, he cannot properly sit in Judgment, but must perform that by his Justices, or Commissioners, as in Cases of Treason, Felonies. The King also, as he is the principle Conservator of the Peace, so he may command all others, and may award Process against them to conserve the Peace; but he cannot take a Recognizance for the Peace, because it must be made to himself, &c.

§. 3. *Officers.* The Lord Chancellor, (or Lord Keeper of the Great Seal) the Lord High Steward of *England*, the Lord Marshal, and High Constable of *England*; the Lord Treasurer of *England*, and every Justice of the King's Bench, as also the Master of the Rolls, as such, have the Conservation of the Peace over all the Realm; and they may award Precepts, and take Recognizances for the Peace, as incident to their Offices; and upon Prayer of Surety of the Peace made to them, or any of them, against another, they have Authority to grant their Warrant to the Sheriff, Constables, or other the King's Officers to arrest the Party, &c. and when he is come before them, may

may take a Recognizance for the Peace. And if the Party shall refuse to find such Surety, they may commit him to Prison. And yet for the Master of the Rolls, it is held that he maketh Process and taketh Recognizance, not as incident to his Office, (as all the other may) but by Prescription.

“The Chamberlain of *Chester* is Judge of the Court of Exchequer there, which hath the Jurisdiction of a Court of Chancery, and is by Virtue of his Office a Conservator of the Peace there, as was amongst other Things certified by Sir *James Dyer*, and the Justices of the Court of the Common Bench to Queen *Eliz.*

“But these Conservators of the Peace are now out of Use; and their Authority is now only by Virtue of the King's Commission of the Peace, ordaining them to be Justices of Peace. Sir *Fr. Bacon* his *Use of the Law*, pag. 12.

§. 4. There be others who (by Virtue of their Offices) have the Conservation of the Peace, but yet only within the Precinct of their several Courts: As Namely, the Justices of the Court of the Common Pleas, the Barons of the Exchequer, and the Justices of Assize and Gaol-Delivery. And any Person may pray the Surety of the Peace before any of these in their Courts: And if the Party be present, or within the Place or Precinct of their Court, or within their View, they may send the Warden of the Fleet, or other Officers attending their Court, to bring the Party before them, and they may take Surety of him; and if he shall refuse to find such Surety, they may commit him to Prison. See Sir *F. Bacon*, pag. 12.

Also the *Justices of Assize*, if the Peace happen to be broken in their Presence and Precinct of the Court, may command the Offender to Prison. And if Complaint be made to them that *A.* is minded to break the Peace, or else if they do perceive the same in their Presence they may command the Parties upon a certain Pain to keep the Peace, and that Weapons be taken from the Jurors or Witnesses that appear before them. But as they be merely Justices of Assize, they may not award any Process or Warrant for the Peace, neither may they take Sureties of the Peace. *Lamb.* 13.

Stewards. Also the *Steward of the Sheriffs Turn*, the Steward of a Leet, and the Steward of a Court of Pipowder, are Conservators of the Peace within their several Courts; for every of them may commit him that shall make an Affray in their Presence whilst they be in Execution of their Offices; for that these are Courts of Record; and so in all other Courts of Record. But none of these may grant any Warrant for the Peace. *Lamb.* 14.

And the Steward of the Sheriffs Turn, as also the *Steward of a Leet*, (during their Courts) may by Recognizance bind him to the Peace, that shall make an Affray in their Presence, sitting the Court; and may commit him until he hath found Surety for the Peace; and may also take Examination of Felons, and commit them to the Gaol; and may also take the Presentment of any Felony at the Common Law, committed within their Precinct, or of any other Offence against the Peace, except the Death of a Man. See *Br. Leet* 1, 2, 14, 18, 22, 26. *Crom.* 7. *Br. Leet* 39. *F.N.B.* 12.

And so if any other Contempt or Disturbance to the Court shall be committed in any of the said Courts, or in any other Court of Record, the Judge (or Steward) there may impose upon such Offenders a reasonable Fine. See *Br. Leet* 14, 36.

Fine.

§. 5. *The Sheriff*, by the Common Law, is a principle Conservator of the Peace in every Place within his County. And (upon Request to him made) may command another to find Surety of the Peace, and may take the same Surety by Recognizance, and that *ex Officio*, and without any Writ of *Supplicavit* to him directed: 'and this seems to be by Virtue of his Commission, which saith, *Commisimus vobis custodiam Comitatus, &c. Vid. Br. Judges 11. & Recogn. 5. 14, 16, & 18.*

§. 6. *Coroners* also (by the Common Law) are Conservators of the Peace within the County where they are Coroners: But they (as also all other the Conservators of the Peace by the Common Law) have Power for the Keeping of the Peace only as the Constables have at this Day; *viz.* they may take Surety for the Peace by Obligation. *Vide hic infra, 3 E. 4. 9. & 10 E. 4. & tit. Forcible Entry, & Crompt. 6.*

§. 7. *The High Constables* of the Hundreds are Conservators of the Peace within their several Hundreds and Limits by the Common Law. *Crompt. 6. & 222. 12 H. 7. fol. 18.*

And therefore these High Constables, at their petty Sessions, for any Affray made in Disturbance of their Court, may imprison the Offenders. *Co. 11, 43, 44.*

Every *Petty Constable* within the Limits of their several Towns are Conservators of the Peace (at the Common Law) by Virtue of their Office. *Vide tit. Affray and Forcible Entry.*

And these Petty Constables may do what they can to keep the Peace; but they cannot take Surety of the Peace at the Request of any Man. 'Yet *ex Officio* they may Cause such as in their Presence are about to make an Affray, to find Sureties to keep the Peace; and that as well before the Affray as after. *See Crompt. 6. & 222, & 12 H. 7. fol. 18. a. & hic postea.*

There be other Officers of like Authority to our Constables: As the *Borsholders in Kent*; the *Thirdborough in Warwickshire*; and the *Tithing-Man*, and *Borrowhead*, or *Headborough*, or Chief Pledge in other Places. But yet the Office of a *Constable* is Distinct, and of greater Authority and respect than those other; as you may see by the Statute of 39 *Eliz. 4.* where the Tithingman or Headborough is to be assisted in the Punishment of Rogues, with the Advice of the Minister, and one other of the Parish, whereas the Constable alone of himself, as well as the Justices of the Peace may appoint or cause Rogues to be punished. And *M. Lambert* of the Duty of Constables, pag. 51, &c. holds that these *Borsholders, Thirdboroughs, Tithingmen, Headboroughs*, and other such, being in any Town or Parish where a Constable is, cannot meddle, because Constables are (in Comparison of them) Head-Officers, and that the Tithingmen, &c. are but as Assistants to the Constables in their Office; and that there are many other Things which the Constables may do, and wherewith the Borsholders and the Rest cannot meddle at all. And yet in Towns where there are no Constables, the *Borsholders, Thirdboroughs, Tithingmen, Headboroughs* or such other, are there the only Officers for the Peace; as also in such Cases where the Power or Authority of the *Borsholders, &c.* is declared to be equal with the Power of the Constable; in all such Cases their Office and Authority are in a Manner all one. *See the Stat. 1 Jac. cap. 7. & Lambert Office des Const. 4, 6, 9.*

There are also divers *Statutes* which appoint Offenders to be punished by the Constable or other *inferior Officer*. Now who be these inferior Officers, if not the Tithingmen, &c.?

Advice.

And now, because these Petty Constables are often absent from their Houses, being for the most part Husbandmen, and so most of the Day in the Fields;) it would prove very serviceable, if, by a Law to be made in Parliament, every Town and Village were to have a Tithingman, or such other Officer, to attend the Service of the Constable, in his Absence at the least, for that for want of such Assistance, Rogues, Vagabonds, and the like, knowing their Times, now travel up and down more boldly.

Deputy Constable.

And yet Mr. *Crompton* fol. 222. saith, That a Constable may make Moor's a Deputy to execute his Office in his Absence, for that he may be Rep. P. sick, &c. And it hath been resolved, that he may make a Deputy, 845 because it is but a Ministerial Office. *Mich. 13 Jac. B. R. Phillips* and *Winscome's Case*. But some have held, that the Making a Deputy is rather by Toleration, than by Law. *Resol. 29.*

Affray.

If any Man shall make an Affray or Assault upon another in Presence of the Constable or Borholder, or if any Man in the Presence of the Constable shall threaten to kill, beat or hurt another, or shall be ready to break the Peace; in every of these Cases the Constable 3 H. 44. 8. 9 F. 12. Hic. cap. 8.

Stocks.

or Borholder may commit the Offenders to the Stocks, or to some other safe Custody for the Present, (as his or their Quality requireth) and after may carry them before some Justice of Peace, or to the Gaol) until they shall find Surety for the Peace; which Surety the Constable himself may also take by Obligation, to be sealed and delivered to the King's Use: And if the Party will not find such Surety to the Constable, he may be imprisoned until he shall do it. 3 H. 4. 9, 10.

I have seen the Report of *Skarret's Case*, *Termo Trin. Ann. 35 Eliz. Rot. 1458.* where *Skarret* brought his Action of false Imprisonment against one *Hanner*, for arresting and imprisoning him, &c. The Defendant to the Imprisonment pleaded, that he was High Constable of the Hundred of *E.* in the County of *S.* and that the Plaintiff made an Affray within the said Hundred upon one *H. W.* who presently came to him and told him thereof, and swore upon a Book that he was in fear of his Life by the other; whereupon the Defendant came to the Plaintiff, and arrested and imprisoned him, until he had found sufficient Sureties for the Peace; upon which the Plaintiff demurred. And it was adjudged, that the Plea of the Defendant was insufficient; first, for that he was not present at the Assault and Affray; secondly, for that he was the High Constable of the Hundred, and not Constable of the Town. In the Argument of which Case *Anderson*

Constable.

Ch. Just. held Constables to be Conservators of the Peace at the Common Law, and still so to be, and that they ought to preserve the Peace as much as in them lieth; but that (said he) was by parting of Men which they should see breaking of the Peace, and to carry them before a Justice to find Sureties for the Keeping thereof: But to take Sureties himself, the Constable cannot. And those which held, that he may take Surety cannot tell what Surety that should be; for he cannot take a Recognizance nor Bail, for he is no *Officer of Record*; and if he shall take an Obligation, how the same shall be certified, and into what Court he said he knew not; and that it should be very inconvenient to give such Authority to every Constable. But by three other Judges, namely, *Walmsley*, *Owen*, and *Beaumont*; although a Constable cannot take 10 E. 3. 18.

Surety for the Peace by Recognizance or Bail, yet he may take an *Obligation*, according to the Book of 10 E. 4. And if the Affray be in their Presence, they are Conservators of the Peace, and therefore may use such Means for Keeping it by taking Surety by *Obligation*. And that before Justices of Peace were, the Peace was preserved, and that by the Constables. And that the *Statute* which ordained Justices of the Peace, did not take away the Authority of the Constable. But the Constable hath no Authority to take an Oath of the Party that is in Fear, &c. Whereunto *Anderson* Ch. Just. replied, saying, I Doubt not but that at the Common Law the Peace was kept, but that was to be done in such Manner as the Law appointed, and that is, by Writ out of the Chancery or King's Bench.

Bacon V. 5. And yet I have seen another Author supposed to be Sir *Tho. Egerton*, after Lord Chancellor; who writeth in these Words: By the Common Law the Constable's Office was, to arrest the Parties that had broken the Peace, or were (*in a Fury*) ready to break the Peace; so if either he had seen it himself, or were truly informed thereof by others, or upon the Confession of the Party who had freshly broken the Peace: And that all such Offenders the Constable might imprison in the Stocks, or in his own House, as the Quality required, until they had been bound by *Obligation*, with Sureties to the King to keep the Peace from henceforth; which Obligation was to be sealed and delivered to the Constable to the Use of the King; and the Constable was to send it into the Exchequer, or Chancery, from whence Process should be awarded to levy the Debt, if the Peace be broken. *Quod nota. Vide etiam Finch, fol. 127.* agreeing herewith, for such as the Constable findeth Breaking the Peace.

§. 8. Every of these Conservators of the Peace are (by the Common Law) to imploy their own, and may also command the Help of others; or arrest and pacify also such who in their Presence and within their Jurisdiction and Limits, by Word or Deed, shall go about to break the Peace.

Now these Conservators of the Peace are only to meddle with *Affrays, Assaults and Batteries, or Threatnings to break the Peace, done in their Presence; but not with Riots, or Forcible Entries, or Detainers.*

And if a Conservator of the Peace, being required to see the Peace kept, shall be negligent therein, he may be indicted and fined for the same.

Also every of these Conservators of the Peace, if they have committed or bound over any such Offenders, they are then to send to, or be present at, and attend the next Sessions of the Peace or Gaol-delivery, there to object against them.

But for the High Constables and Petty Constables, although they have (by the Common Law) the Charge of the Peace, as incident to their Office; yet their Offices and Authority began not long before the Time that Justices of the Peace were ordained: (See here *titulo Constable.*) Whereas the Sheriffs, Coroners, Stewards of the Sheriff's Turn, of the Leet, and of the Court of Piepowders, and the Justices of all higher Courts, were long Time before the Conquest. See *Co. 9 Part. the Preface.*

There were other Persons who (by the Common Law) had the ordinary Keeping of the Peace, and were named *Custodes pacis*; whereof some were by Election (in full County) and some by Tenure, as you

you may see in *M. Lambert* 16, 17. There were others which were called to this Office by the King's Writ, to continue for the Term of their Lives, or at the King's Pleasure, but these are now all ceased.

CHAP. II.

The first Ordaining of Justices of the Peace.

- §. 1. **K**ING Edward the First, (according to the first Article of the Oath taken by him, and since by other Kings and Queens of this Realm at their several Coronations, in these Words, *Servabis Ecclesie Dei, Clero & Populo, Pacem ex Integro, & Concordiam in Deo secundum consuetudinem legum tuarum. Quibus Rex respondet, Servabo.*) in his first Parliament holden *An. 3.* of his Reign, *Cap. 1.* hath established, that the Peace of Holy Church and of the Land shall be well kept and maintained in all Points: Which *Peace of the Church* is (and always hath been by the antient Laws of this Land) protected by the King, the Archbishops and Bishops of this Realm; and the *Peace of the Land* is and always hath been, defended and maintained by the same King, and his temporal Justices or Officers lawfully appointed for the same, &c. which *Temporal Justices*, at the first, were the Conservators of the Peace, as aforesaid. But more especially in those Times, there were also in every County Justices of *Oyer and Terminer*, and also there were *Justices Itinerants*, which had Power not only to determine all Manner of Quarrels, (as well Real as Personal) but also all Offences against the Peace, &c. as may appear in our Law-Books, and especially in *M. Fitz. Tit. Corone*, amongst the *Iter' North' & Canc'*.
- §. 2. For although in our Annals, it is reported that *William the Conqueror* ordained Justices of the Peace about *An. Dom. 1070. An. quarto* of his Reign; yet the Justices of Peace had not their Being almost Three hundred Years after, *viz. until An. Dom. 1327.* At which Time Justices or Commissioners of the Peace were first created by the Stat. *1 Ed. 3. c. 16.* By which Statute it was ordained, That in every Shire of the Realm certain Persons should be assigned (*sc.* by the King's Commission) to keep the Peace. And their Authority was after enlarged by the Statutes *4 Ed. 3. c. 2.* *18 Ed. 3. c. 2.* and *34 Ed. 3. c. 1.* And by many other Statutes made since in every King's Reign. And by the said Statute of *34 E. 3. 1.* were they first enabled to hear and determine (at the King's Suit) all Manner of Felonies and Trespasses: And each County had now its proper Commissioners for the Peace, whereas before the Commissions to the Justices of the Peace were not made severally into one Shire, but sometime jointly to sundry Persons over sundry Shires. And by the Stat. *2 H. 5. c. 1.* Stat. 2. Justices of Peace shall be made of the most sufficient Persons dwelling in the same Counties, by the Advice of the Chancellor and King's Council.
- §. 3. But the Statute of *36 E. 3. c. 12.* is the first Statute that nameth them Justices of the Peace. For the Statutes of *2 E. 3. c. 6.* and *25 Ed. 3. c. 6, 7, 8.* speaking of Justices, seem not to be of our Justices of Peace; but that of *2 Ed. 3.* as also the Statute of *Winchester, cap. 1.* therein mentioned, to be meant of *Justices Itinerants*, or *Justices in Eyre*; and the other of *25 Ed. 3.* to be meant of Justices or Commissioners specially

specially assigned for Servants and Labourers: See for this last; *Lamb.* 24. & 577, 578. and the *Statutes* of Labourers made 25 *E. 3. c. 6, 7, 8.* and of 42 *Ed. 3. c. 6. Rastal, fol. 233. a. b. d.*

Justice of
Peace is a
Judge of
Record.

They be called Justices [of the Peace] because they be Judges of Record, and withal to put them in Mind, (by their Name) that they are to do Justice (which is, to yield to every Man his own according to the Laws, Customs, and Statutes of this Realm) without Respect of Persons. See 2 *Car. 19. 6, 7.*

They are named also Commissioners of the Peace, because they have their Authority by the King's Commission.

"The Name in Latin *Custodes pacis*, is equivalent to that of *Justiciarii pacis*, as was resolved *Pasch. 10 Jac. B. R.* the King against *Litle*, where upon a *Certiorari*, it was returned *quod ad general, &c. coram A. & B. custodibus pacis, Dom. Regis, &c.* an Indictment was found, and this taken for an Exception that some were *Custodes pacis*, that were not *Justiciarii pacis*; yet the Exception was disallowed. *Rolls 2. p. 95.*

§. 4.

And here it shall not be amiss shortly to put our Justices of Peace in Mind, how Justice may be perverted many Ways, (if they shall not arm themselves with the Fear of God, the Love of Truth and Justice, and with the Authority and Knowledge of the Laws and Statutes of this Realm). As namely,

1. *By Fear*; when Fearing the Power of another, they do not do Justice. *Deut. 1. 17. Ye shall not fear the face of man, for the Judgment is Gods, who is Capitalis Justiciarius totius Mundi*, Chief Justice of Heaven and Earth, and they are his Lieutenants. *2 Chron. 19. 6.*

2. *Favour*; when they seek to please their Friend, Neighbour, or other, *Deut. ibid. Ye shall have no respect of persons in Judgment. Thou shalt not favour the person of the poor, nor honour the person of the mighty, but judge justly. Levit. 19. 15.*

3. *Hatred or Malice* against the Party, or some of his. *Levit. 19. 18. Thou shalt not avenge, nor be mindful of wrong.*

4. *Covetousness*; when they receive or expect Fee, Gift or Reward; for as the Wise Man saith, *Rewards and Gifts do blind the Eyes of the Wise, and make them dumb, that they cannot reprove faults.* *Eccl. 10. 28.*

5. *Perturbation of Mind*; as Anger, or such like Passion. *Jam. 1. 20. The wrath of man doth not accomplish the righteousness of God.*

6. *Ignorance*, or Want of true Understanding of what is to be done. *Ignorantia mater Erroris.*

7. *Presumption*; when without Law they (presuming of their own Wits) proceed according to their own Wills and Affections. *There is more hope of a fool, than of him that is wise in his own conceit, Prov. 26. 12.*

8. *Delay*; which in Effect is a Denying of Justice. *Negligentia semper habet comitem infortunium, & mora trahit periculum.*

9. *Precipitation*, or too much Rashness; when they proceed hastily; without due Examination and Consideration of the Fact, and of all material Circumstances, or without Hearing both Parties: For *the Law judgeth no man before it hear him, John 7. 51.* And the Philosopher could say, *Qui aliquid statuerit, parte inaudita altera, Seneca. Aequum licet statuerit, haud equus est*; He that shall judge or determine of a Matter, the one Party being unheard, although he shall give just Judgment, yet he is not a just Judge. And again, *Omnia non properanti clara certaque fiunt, Festinatio autem semper improvida*

oida ac ceca est; All Things are plain and certain to him that is not rash nor heady, but Haste is always improvident and blind. See Deut. 17. 4. Ecclesiasticus 11. 7, 8. and Prov. 18. 13.

His Majesty's Speech in the Star-Chamber, An. 1616.

All these, King James hath shortly, yet fully observed in his Charge given to the Judges, *sc.* charging them *that they do Justice uprightly and indifferently, without Delay, Partiality, Fear or Bribery, with stout and upright Hearts, with clean and uncorrupt Hands; and yet not to utter their own Conceits, but the true Meaning of the Law, not making Laws, but interpreting the Law, (and that according to the true Sense thereof, and after deliberate Consultation,) remembering that their Office is jus dicere, and not jus dare.*

"According to this last also is the Rule given in the Book of Judges, *sc.* In all Causes doubtful, first to consider of the Matter, to consult, and then to give Sentence: Which Sentence must be agreeable to the Merits of the Cause and Crime, else it is not equal.

"Yea, God himself hath given us Precedents of such deliberate Proceedings; as you may see in Genesis, chap. 3. ver. 8, &c. and Gen. 3. 8, chap. 18. vers. 21. 9, 11.

"These are worthy Directions for all Justices of Peace, and other Magistrates, that they carry themselves in their Places uprightly and indifferently, not uttering their own Conceits, nor upon the sudden to over-rule Things; but after deliberate Consideration and Consultation, then to proceed to execute the Authority committed to them.

Properties of Justices.

"Now there be four essential Properties required in Magistrates and Justices, *viz.*

1. "They must be Men of *Ability of Body and Estate*, and of Courage for the Truth, and in the Truth.

2. "They must be Men *Fearing God*; not seeking the Place for Honour or Commodity, nor respecting Persons, but the Cause.

3. "They must be *Men dealing truly*, searching out all the Truth, and hating Covetousness.

4. "They must *judge the People at all Seasons*, using all Diligence in hearing and ending Causes; and not to neglect the publick, for private Employments, or Ease. See Exodus 18. 21, 22. and Job 29. 12 ad 17. For they bear not the Sword in vain, Rom. 13. 4.

Justices of Peace are Judges of Record, appointed by the King to be Justices within certain Limits for the Conservation of the Peace, and for the Execution of divers Things comprehended within their Commission, and within divers Statutes committed to their Charge. *Their Description or Definition.*

9 E. 4. 3.
14 H. 8.
16.

Now, first, that the Justices of Peace are Judges of Record, (yea, that every Justice of Peace by himself is a Judge of Record, and one upon whose sole Report and Testimony the Law reposeth it self very much) appeareth more plainly, if you observe these Things following:

1. He is made under the Great Seal of *England*, which is a Matter of Record.

2. Every Justice of Peace hath judicial Power given unto him by the Commission, *sc.* in the first *Assignavimus*.

Forcible Entry.

3. Also by some Statutes they have judicial Power given them; for they may make a Record of a *Force* by them viewed, and may thereupon fine and imprison the Offenders; yea, one Justice of Peace in some Cases, may also hear and determine Offences, and punish an Offender as convict upon his own View, or upon the Confession of the Offender, or upon Examination and Proof of Witnesses. *Vide Tit. Forcible Entry.*

4. His

La. 67. 94. 14 H. 8. 18. Co. 10. 76. 4. His *Warrant* (tho' it be beyond his Authority) is not disputable by the Constable, or other inferior Minister, but must be obeyed and executed by them. But this must be understood when the Justice of Peace hath Jurisdiction of the Cause, for or concerning which he hath granted his *Warrant*; for otherwise the Constable or other Officer executing their *Warrant*, seemeth to be punishable. *Vide Tit. Warrants.*

Lamb. 67. 5. He may take a Recognizance (for the Peace, &c.) which is a Matter of Record, and which none can do but a Judge of Record. See *Br. Recog.* 8, & 14.

6. His Record (or Testimony) in some Cases is of as great Force as an Indictment upon the Oath of twelve Men, and in some other Cases of greater Force than an Indictment. See hereof *Tit. Force, Highways, Peace and Riot.*

7. He also may make out Process upon Indictments, or Informations against Offenders, &c. and that out of their Sessions, (in some Cases) as you may see hereafter, *Tit. Process.*

Great Cause therefore have the Justices of Peace to take heed that they abuse not their Authority, either to the Oppressing of the Subject, by making untrue Records, or Defrauding of the King, by Suppressing the true Record.

§ 6. By the *Statute* of 12 R. 2. cap. 10. there should be but six Justices of Peace (in every Commission of the Peace) with the Justices of Assize. *The Number.*

After, by the *Stat.* 14 R. 2. c. 11. it was ordained, That there should be eight Justices of Peace assigned, besides the Lords.

And *two Lawyers* (at least) shall be assigned in every County, to hear and determine Felonies and Trespasses done against the Peace, 18 E. 3. c. 2. 34 E. 3. c. 1. & 17 R. 2. c. 10.

Also Justices of Peace ought to be resident and dwelling within the same County, (except Lords and Judges, &c.) 2 H. 5. c. 4. & 2 H. 5. *Stat.* 2. c. 1.

Authority given to Justices of Peace ought to be pursued, and so it ought to appear in their Orders. 2 *Salk.* 475.

Their Orders being judicial Acts, are only voidable, for they continue Orders till avoided. 2 *Salk.* 674.

CHAP. III.

Peace.

§ 1. *Peace, what.* **P**EACE, in Effect, (saith M. *Fitzh.*) is the Amity, Confidence, and Quiet that is between Men; and he that breaketh this Amity or Quiet, breaketh the Peace. *Fitz. Just. of P. 13.*

Yet Peace (in our Law) is taken for an Abstinence from actual and injurious Force; and so is rather a Restraining of Hands, than an Uniting of Minds. And for the Maintenance of this Peace chiefly were the Justices of Peace first made.

§ 2. *Breach of it.* The Breach of this Peace seemeth to be any injurious Force or Violence moved against the Person of another, his Goods, Lands, or other Possessions, whether it be by threatening Words, or by furious Gesture, or Force of the Body, or any other Force used *in terrorem.*

The Office of the Justices of Peace is principally to be exercised 'to the Keeping of the Peace, and suppressing and bringing to Punishment Persons using such injurious and unlawful Force or Violence.' And yet (the Commission of the Peace being *pro bono Pacis, ac pro conservatione ejusdem, & pro quieto regimine & gubernatione populi*.) I see not why the Justices of Peace should be restrained from preventing and repressing such other Offences, Misbehaviours and Deceits as may break the Amity, Quiet and good Government of the People, and whereof Discords, and so Breaches of the Peace do often arise, (though there appear neither Force nor Violence in the Offence it self:) as *Libellings, Cozenages*, and such other Offences. *Vide Tit. Good Behaviour.* Latch p. 48.

But it is no Part of the Office of the Justice of Peace to forbid lawful Suits; albeit they shall do well to be Mediators of Peace in such Suits and Controversies as shall arise among their Neighbours. Neither shall any Man be punished for Suing any Writ in the King's Courts, *soit ceo de Droit ou de Tort. Co. L. 61.*

§. 3.
Conservation
of
Peace.

The Conservation of this Peace (and therein the Care of the Justice of Peace) consisteth in three Things, *viz.*

1. In Preventing the Breach of the Peace, by taking Surety for the Keeping of it, or for the Good Behaviour of the Offenders, as the Case shall require.

2. In Pacifying such as are Breaking of the Peace. See *postea*, Tit. *Affray*.

3. In Punishing (according to Law) such as have broken the Peace.

But of the Three, the preventing Justice is most worthy to be commended to the Care of the Justices of Peace.

§. 4.
Stat. 27 H. 8.
9. c. 24.

"The constituting Justices of Peace is inherent, and inseparable from the Crown, and because this amongst others had been severed therefrom, to the great Diminution and Detriment of that Royal State, and the Hindrance and Delay of Justice, as speaks the Statute of 27 H. 8. It was thereby enacted, That no Person should have Authority to make any Justices of Peace, but only the King, his Heirs and Successors, by their Letters Patent, nor was nor is his Power to be delegated, for the King cannot grant a Man Power to make Justices of the Peace, as is the Book of 20 H. 7. 7. a. Who may make them.

§. 5.
Three
Sorts.

Justices of Peace (at this Day) are of three Sorts, and are appointed or created by three Means.

1. First, By Act of Parliament; as the Bishop of *Ely* and his Successors, and their temporal Stewards of the *Isle of Ely* (for the Time being) shall be Justices of Peace within the said Isle, and shall use and have within the said Isle all such Power as doth belong to any Justice of Peace within any County. 27 H. 8. 124. P. Just. 2.

And so of the *Archbishop of York*, and the *Bishop of Durham*, and their Successors, and their temporal *Chancellors*, &c. *ibidem*.

2. Secondly, By Grant made by the King by his Letters Patent under the Great Seal, as Mayors, and the chief Officers in divers Corporate Towns: And such the King cannot discharge again at his Pleasure, but they shall continue and enjoy their Jurisdiction according as their Letters Patent do enable them; and therefore if the King granteth to a Mayor, or other Head-Officer of a City or Corporate Town, and to their Successors, to be Justices of Peace in their City or Town, and after maketh out Commission of the Peace to others there, yet the Authority and Jurisdiction of the Mayor, &c. remaineth good, By Grant.

Br. Crom.
miss. 5.

for that it was granted to them and their Successors, and is not revocable at the King's Pleasure, as the Commission of the Peace is.

"Which Grants and Charters may notwithstanding for some great and general Defect of, or Miscarriage in the Execution of the Powers and Authorities herein granted, be repealed, and the Liberties seized, so also may the Kings Majesty upon reasonable Cause moving him, *ne deesset populo in Justitia exhibenda*, grant concurrent Commissions of the Peace within such Incorporations.

And such Justices of Peace by Grant or Patent have thereby the same Power as the Conservators of the Peace had by the Common Law; and such Power also is given to the Justices of Peace (or to any one Justice of Peace) by express Words in any Statute: But none of them have thereby the whole Power which is ordinarily given to the Commissioners of the Peace by their Commissions. And so of the first Sort of Justices of Peace by Act of Parliament, *sc.* the Archbishop of York, and the Bishops of Durham and Ely, and their temporal Chancellors and Stewards.

Lawyer.

Also concerning such Justices of Peace by Grant or Patent, if the Grant be made to such as be not learned in the Law, yet if it be *Ad Pacem conservandam*, &c. or *Ad inquirendum tantum*, this is a good Grant: But if the Grant be made, *Ad audiendum & terminandum*, this is a void Grant, (*ut dicitur*) unless some one learned in the Laws be also joined with the other in the Commission; and then such a Commission made *Ad audiendum & terminandum* is good in Law. For in all Cases where the Commission or Grant is *Ad audiendum & terminandum*, it is meet that some, or one of them at the least, should be learned in the Laws of this Realm. See the Statutes 18 E. 3. cap. 2. & 13 R. 2. cap. 7. & 17 R. 2. cap. 10.

6. 7.
18 H. 6.
cap. 11.

3. The third Sort of Justices of Peace are by Commission (made of common Course under the Great Seal of England): And these are appointed by the Discretion of the Lord Chancellor, or Lord-Keeper of the Great Seal. And yet the Justices of Peace within the County Palatine of Lancaster are to be made by Commission under the Seal of the same Dutchy, by the Statute 27 H. 8. c. 24.

By Commission.

Raft. 184.
d.

Lancaster.

§. 8.

But these Commissioners of the Peace their Authority doth determine by divers Means, yet more usually by three Means.

How they determine.

First, by the Death of the King, or by his Resignation of his Crown: For by the Commission he maketh then *Justiciarios nostros*, so that he being once dead, or having given over his Crown, they are no more his Justices, and the Justices of the next Prince they cannot be, unless it shall please him afterwards so to make them. Lamb. 71. Dyer 165. a.

"After the Death of a King of England, his Successor by Proclamation signifies, that all in Judicial Places, as Justices of Peace, &c. shall continue and exercise their Offices, yet it is not safe for them to act without a new Commission, as was done 1 Ca. primi touching the Justices at Westminster. Cro. 1. c. 1.

2. At the King's Pleasure, and that in two Sorts.

§. 9.
E. 4. 32.
Br. Coron.
18.
12 Aff. 21.
Br. Com.
§. 3.

1. Either by the King's Pleasure expressed, (as the King in express Words may discharge them by his Writ under the Great Seal) or by *Supersedeas*; but the *Supersedeas* doth but suspend their Authority, which may be revived by a *Procedendo*.

2. Or by Implication; (as by making other Commissioners of the same Kind, and within the same Limits, leaving out the ancient Commissioners Names.) 10 E. 4. 7. & 3 Mar. 1.

But the ancient Commissioners must have Knowledge of such new Commission; for this Determination of the old Commission groweth not immediately by making the new Commission, but either by giving special Notice of the new Commission unto the old Commissioners; or else by and after the Reading (or Proclaiming) of the new Commission at the Assizes, Sessions of the Peace, or at the full County; or else by holding of some open Sessions by Virtue of the new Commission, (in which two last Cases the old Commissioners must take Notice of the new Commission.) And in all these Cases, if the ancient Commissioners do sit by Virtue of their ancient Commission, and after such Notice or Publishing of the new Commission, all whatsoever such ancient Commissioners shall so do, is void: And contrariwise, until such Notice or Publishing of the new Commission, whatsoever mean Acts such ancient Commissioners shall do, by Virtue of their ancient Commission, are good in Law. See 34 Aff. 8. B. c. 14.

Also in all Places where any ancient Commission of the Peace is determined by a New, yet no Process or Suit depending before the old Commissioners shall be discontinued thereby; neither shall any other Thing done by the Justices of Peace by force of their ancient Commission be made or become void thereby.

§. 10. 3. By the Accession of another Office; as when a Justice of Peace is chosen to be Sheriff of the same County, his Authority of a Justice of Peace there is suspended during his Sheriffwick; but after that another is chosen and sworn Sheriff of the same County, then this Authority as a Justice of Peace remaineth as it was before; without any renewing of the Commission, and without any of the Oaths newly to be taken by him; except his Name be then left out of the Commission, as sometimes had been used to be done; and perhaps only to get new Fees.

The Reason why his Authority of a Justice of Peace is suspended during his Sheriffwick seemeth to be, for that the Sheriff is a Minister, and a Justice of Peace is a Judge; and the one is as necessary as the other. And besides the Office of a Judge being to command, and of a Minister to execute the Commandment; if one Man shall be both Judge and Minister, it would follow, that the Sheriff ought to command himself, or that he should, as an Officer, serve his own Precept made as Justice or Judge, which cannot be.

Also if a Justice of Peace be made a Coroner of the County, this by some Opinions is a Discharge of his Authority of Justice of Peace; otherwise where he shall be made an Escheator, Under-Sheriff, Bailiff or the like. Lamb. 72. Quere.

But if a Justice of Peace be made a Knight, or Serjeant at Law, or hath any greater Name or Office of Honour or Dignity given him, this taketh not away his Authority of a Justice of Peace. Br. Com. 4 & 22. See also the Statute of 1 E. 6. c. 7.

Note also, that although by the Death of the King, or by his Resignation, the Authority of all Justices of the Peace, which are by Commission (yea and of all Judges, Commissioners of Oyer and Terminer, Commissioners of Gaol-delivery, Sheriffs, Escheators, and other Officers that are by Commission) doth cease; yet Mayors and chief Officers in Cities and Corporate Towns, (which have the Authority

of Justices of Peace, or of the Conservation of the Peace, by Grant under the King's Letters Patent to them and their Successors) their Authority still remaineth.

So also the Office and Authority of the High Constables and petty Constables seemeth to remain, notwithstanding the Death of the King, &c. for that their Authority is by the Common Law, and to their said Office the Conservation of the Peace remaineth, as a Thing incident and inseparable from the same.

Coroners also do remain Conservators of the Peace (within the County where they are Coroners) notwithstanding the King's Death, &c. for they are made by the King's Writ, and not by Commission; and their Office and Authority doth remain until they be removed by the King's Writ, and their Office remaining, the Conservation of the Peace remaineth as incident thereto. They are elected by the Freeholders and are returned of Record into Chancery, and therefore being judicially made, must be judicially discharged.

CHAP. IV

Every Justice of Peace (before he shall take upon him to exercise the Office of a Justice of Peace) shall take two corporal Oaths; the One concerning the Office of a Justice of Peace, the other concerning the King's Supremacy.

The Oath concerning this Office seemeth to be by Force of the Statute made 13 R. 2. c. 7. And yet see the Oath of the Justices made Ann. 18 E. 3. much to the like Effect that now it is, in which Year also M. Morrow taketh it that Justices of Peace were first made, they having then first Power given them to hear and determine Felonies and Trespases against the Peace, as appeareth by the Statute of 18 E. 3. c. 2.

The Form of the Oath is at this Day as followeth.

YE shall swear, that as Justice of the Peace in the County of Camb. in all Articles in the King's Commission to you directed, you shall do legal Right to the Poor and to the Rich, after your cunning Wit and Power, and after the Laws and Customs of the Realm; and Statutes thereof made: And ye shall not be of Council of any Quarrel hanging before you: And that ye hold your Sessions after the Form of the Statutes thereof made: And the Issues, Fines, and Amercements that shall happen to be made, and all Forfeitures which shall fall before you, ye shall Cause to be entred without any Concealment (or inbezilling) and truly send them to the King's Exchequer, ye shall not let for Gift, or other Cause, but will and truly you shall do your Office of Justice of the Peace in that behalf: And that you take nothing for your Office of Justice of the Peace to be done, but of the King, and Fees accustomed, and Costs limited by the Statute: And ye shall not direct, nor cause to be directed, any Warrant (by you to be made) to the Parties, but ye shall direct them to the Bailiffs of the said County, or other the King's Officers (or Ministers, or other indifferent Persons, to do Execution thereof. So help you God, &c.

The

Part of the Oath. The Parts of this Oath are shortly Six.

1. That they shall do equal Right to Rich and Poor, according to the Laws and Statutes of the Realm.

2. That they shall not be of Counsel with any Person in any Matter depending before them.

3. That they shall keep their Sessions according to the Statutes, which (by the Stat. 2 H. 5. c. 4.) ought to be in the first Week after the Feast of S. Michael, after the Epiphany, after the Clause or Feast of Easter, and after the Translation of S. Thomas the Martyr, being the third Day of July, and accordingly the Quarter-Sessions of the Peace ought still to be holden throughout the Realm. See Lam. 579, 580. And yet by the Statute of 14 H. 6. c. 4. the Justices of Peace of Middlesex are to keep their Sessions but twice in the Year.

4. That all Issues, Fines, Amercements, and Forfeitures which happen before them, be by them truly entred, and sent into the Exchequer.

5. That they take nothing for doing their Office, but of the King, and the accustomed Fees appointed by the Statutes.

6. That they shall not direct any their Warrants to the Parties but to the Bailiffs of the County, or to other of the King's Officers, as to the Sheriff, High Constable, Petty Constable, &c. or other indifferent Persons.

Sessions. Now farther concerning the Times of the Quarter-Sessions, it seemeth to be the Intent or Meaning of the afore-recited, Stat. 2. H. 5. c. 4.

4. that the Weeks wherein the aforesaid Feasts of S. Michael, the Epiphany, and S. Thomas fall, must be first ended before the Sessions can begin. So that if any of these three Feast-Days shall fall upon the Sunday, Monday, Tuesday, or Wednesday, then shall the Sessions (in our County of Cambridge) be upon Thursday seven-night after; but if any of those Feasts shall fall upon Thursday, Fryday, or Saturday, then shall all our Sessions be upon the next Thursday after; and for our Easter Sessions, upon the Thursday seven-night after Easter Day.

* 1 W. c. 8. The other Oath concerning the King's Supremacy, is by Force of the Statute made primo Eliz. c. 1. But that is now abrogated, * and instead of that Oath, this is now enjoined.

The Oath of Allegiance. I do sincerely promise and swear, that I will be faithfull and bear true Allegiance to his Majesty King George.

So help me God.

The Oath of Supremacy. I M. D. do swear, that I do from my Heart detest and abjure as impious and heretical that damnable Doctrine and Position, that Princes excommunicated may be deprived by the Pope, or any Authority of the See of Rome, may be deposed by their Subjects or any other whatsoever; and I do declare that no Foreign Prince, Person, Prelate, State or Potentate, hath or ought to have any Jurisdiction, Power, Superiority, Preeminence or Authority, Ecclesiastical or Civil within this Realm.

So help me God.

13 & 14 W. c. 6. All Persons who shall bear any Office Civil or Military, shall within three Months afterwards take the said Oaths, and the Oath of Abjuration as followeth.

13. I

I M. D. do truly and sincerely acknowledge, profess, testify and declare in my Conscience before God and the World, that our Sovereign Lord King George, is lawful and rightful King of this Realm, and all other his Majesty's Dominions and Countries thereunto belonging; and I do solemnly and sincerely declare, that I do believe in my Conscience, that the Person pretended to be Prince of Wales during the Life of the late King James, and since his Decease pretending to be and taking upon himself the Stile and Title of King of England, by the Name of James the Third, or of Scotland by the Name of James the Eighth, or the Stile and Title of King of Great Britain, hath not any Right or Title whatsoever to the Crown of this Realm, or any other the Dominions thereunto belonging: And I do renounce, refuse, and abjure any Allegiance or Obedience to him; and I do swear, that I will bear Faith and true Allegiance to his Majesty King George, and him will defend to the utmost of my Power, against all traiterous Conspiracies and Attempts whatsoever, which shall be made against his Person, Crown or Dignity: And I will do my utmost Endeavour to disclose and make known to his Majesty and his Successors, all Treasons and traiterous Conspiracies which I shall know to be against him or any of them; and I do faithfully promise, to the utmost of my Power, to support, maintain, and defend the Succession of the Crown against him the said James, and all other Persons whatsoever, which Succession by an Act, intituled, An Act for the farther Limitation of the Crown, and better securing the Rights and Liberties of the Subjects, is and stands limited to the Princess Sophia, Electress and Dutches Dowager of Hanover, and the Heirs of her Body being Protestants; and all these Things I do plainly and sincerely acknowledge and swear, according to these express Words by me spoken, and according to the plain and common Sense and Understanding of the same Words, without any Equivocation, mental Evasion, or secret Reservation whatsoever; and I do make this Recognition, Acknowledgment, Abjuration, Renunciation, and Promise heartily, willingly and truly, upon the true Faith of a Christian.

The Oath
of Abjuration.

So help me God.

And all Persons who are required to take the said Oaths, shall at the same Time repeat and subscribe the Declaration against Transubstantiation:

I M. D. do declare, that I do believe there is not any Transubstantiation in the Sacrament of the Lord's Supper, or in the Elements of Bread and Wine, at or after the Consecration thereof by any Person whatsoever.

The Declaration.

The King by his Commission under the Great Seal may constitute such Number of Justices of Peace in Wales as he shall think convenient; and the Persons thus constituted shall have as full Power to execute the Office of a Justice of Peace as any other Justice might have done before the Making that Act.

Yet it is most usual that both of these Oaths are taken by a special Commission, (viz. by a Writ of *Dedimus potestatem*, directed out of the Chancery to some antient Justice of Peace to take the same Oaths) which by them is to be certified into the same Court, at such Day as the Writ commandeth. The Form of which Certificate, see *hic postea*.

The Justice of Peace (or other Person) to whom a *Dedimus Potestatem* shall be directed, to take the Oaths of a new Justice of Peace,

if

if he shall return the Commission, and the Oaths to be taken, when they were not taken, he is fineable in the Court of King's Bench.

So if the new Justice of Peace shall exercise this Office before he hath taken both these Oaths, he shall be disabled to sue, to be Guardian, Executor or Administrator, and be incapable of any Legacy, or Gift, or to be in any Office, and shall forfeit 500*l.* to him who will sue for the same.

Crom. 11.
Co. 11. 98.

Also if a Justice of Peace shall not perform his Oath, (concerning his Office) it seemeth he is fineable, &c. Yet see Co. 11. 98. a. That a Man shall not be charged in any Court Judicial for the Breach of a general Oath, which he taketh when he is made an Officer or Minister, &c. But if he do a Thing contrary to his Oath, that aggravates his Offence.

Nota, quod Juramentum debet habere comites, Veritatem, Judicium, & Justitiam, Jer. 4. 2. Et si ista defuerint, non Juramentum, sed Perjurium erit. Nemo se seducat; qui enim per lapidem falso jurat, perjurus est. Quacunque arte verborum, vel mentis reservatione juret aliquis, Deus ita accipit sicut ille cui juratur intelligit: Et minus malum est per Deum falsum jurare veraciter, quam per Deum verum jurare fallaciter.

Now for that all the Authority and Power of these Commissioners or Justices of the Peace ariseth partly out of their Commission, and partly out of the Statutes; I will first set down the Form of the Commission it self, shortly considering the Parts thereof.

CHAP. V.

The Form of the Commission of the Peace.

§. 1.

1.
Ad pacem conservandam.

GEOGIUS, &c. *Prædilecto & fideli King, Domino Custod. Mag. Sigilli Angliæ, — Comiti Thesaurar' Angliæ, &c. Salutem.* Sciatis, quod assignavimus vos, conjunctim & divisim, & quemlibet vestrum Justiciarios nostros, ad Pacem nostram in Comitatu nostro Cantabrigiæ conservandam, ac ad omnia Ordinationes & Statuta pro bono Pacis nostræ, ac pro conservatione ejusdem, & pro quieto regimine & gubernatione populi nostri edita, in omnibus & singulis suis Articulis, in dicto Comitatu nostro (tam infra Libertates quam extra) juxta vim formam, & effectum eorundem custodiendum, & custodiri faciendum; Et ad omnes contra formam Ordinationum vel Statutorum illorum, aut eorum alicujus, in Com' præd' delinquentes, castigandum & puniendum, prout secundum formam Ordinationum & Statutorum illorum fuerit faciendum; & ad omnes illos qui alicui, vel aliquibus de populo nostro de corporibus suis, vel de incendio domorum suarum, minas fecerint, ad sufficientem securitatem de Pace vel bono gestu suo erga nos & populum nostrum inveniendam coram vobis, seu aliquo vestrum, venire faciendum; & si hujusmodi securitatem invenire recusaverint, tunc eos in prisonis nostris (quousq; hujusmodi securitatem invenerint) salvo custodire faciendum. Assignavimus etiam vos, & quoslibet duos vel plures vestrum, (quorum aliquem vestrum, A.B.C.D.E.F. &c. unum esse volumus) Justiciarios nostros ad inquirendum per Sacramentum proborum & legalium hominum de Comitatu præd', (per

§. 6.
Ad Inquirendum.

quos rei veritas melius sciri poterit) de omnibus & omnimodis Feloniis, Veneficiis, Incantationibus, Sortilegiis, Arte magica, Transgressionibus, Forstallariis, Regrataris, Ingrossariis, & Extortionibus quibuscunq; ac de omnibus & singulis aliis malefactis & offensis (de quibus Justiciarii Pacis nostræ legitime inquirere possunt, aut debent) per quoscunq; & qualitercunq; in Comitatu præd' factis sive perpetratis, vel imposterum ibidem fieri vel attemptari contigerit: Ac etiam de omnibus illis qui in Comitatu præd' in Concoenticulis contra Pacem nostram, in perturbationem populi nostri, seu vi armata ierint vel equitaverint, seu imposterum ire vel equitare præsumperint, ac etiam de omnibus his qui ibidem ad gentem nostram maihemandum vel interficiendum in insidiis jacuerunt, vel imposterum jacere præsumperint: Ac etiam de Hostelariis, & aliis omnibus & singulis personis qui in abusu Ponderum vel Mensurarum, sive in venditione Viſtualium, contra formam Ordinationum & Statutorum, vel eorum alicujus inde pro communi utilitate Regni nostri Angliæ & populi nostri ejusdem editorum, deliquerunt, vel attemptaverunt, seu imposterum delinquere vel attemptare præsumperint in Com' præd': Ac etiam de quibuscunq; Vicecomitibus, Ballivis, Seneschallis, Constabulariis, Custodibus Gaolarum, & aliis Officiariis, qui in executione Officiorum suorum (circa præmissa seu eor' aliqua) indebite se habuerunt, aut imposterum indebite se habere præsumperint, aut tepidi, remissi vel negligentes fuerunt aut in posterum fore contingerint, in Comitatu prædicto: Et de omnibus & singulis articulis & circumstantiis & aliis rebus quibuscunq; per quoscunq; & qualitercunq; in Com. præd. factis sive perpetratis, vel quæ in posterum ibid' fieri vel attemptari contigerit, qualitercunq; præmissorum vel eor' alicujus concernentibus plenius veritatem: Et ad indictamenta quæcunq; sic coram vobis seu aliquibus vestrum capta, sive capienda, aut coram aliis nuper Justiciariis Pacis in Com' præd' facta sive capta (& nondum terminata) inspiciendum: Ac ad Processus inde versus omnes & singulos sic indictatos, vel quos coram vobis in posterum indictari contigerit, (quousq; capiantur, reddant se, vel utlagentur) faciend' & continuand'. Et ad omnia & singula Felonias, Veneficia, Incantationes, Sortilegia, Artes magicas, Transgressiones, Forstallarias, Regratarias, Ingrossarias, Extortiones, Concoenticula, Indictamenta præd' ceteraq; omnia & singula præmissa, secund' Leges & Stat' Regni nostri Angliæ, (prout in hujusm' casu fieri consuevit aut debuit) Audiendum & Terminandum; & ad eosdem Delinquentes, & q'libet eorum, pro delictis suis, per Fines, Redemptiones, Amerciamenta, Forisfacturas, ac alio modo (prout secundum Legem & Consuetudinem Regni nostri Angliæ, aut formam Ordinationum vel Statutorum præd', fieri consuevit aut debuit) castigandum & puniendum.

Proviso semper, qd' si casus difficultatis sup' determinatione aliquor' præmissor' coram vobis, vel aliquib' duob', vel pluribus vestrum evenire contigerit; tunc ad iudicium inde reddend', nisi in presentia unius Justiciariorum nostrorum de uno vel de altero Banco, aut Justiciariorum nostrorum ad Assisas in Com' præd' capiendas assignatorum, coram vobis, vel aliquibus duobus, vel pluribus vestrum, minime procedatur.

Charge to
the Justices.

Et ideo vobis & cuilibet vestrum mandam', qd' circa custod' Pacis, Ordination', Statutor', & omnium & singulorum ceteror' præmissor', diligenter intendatis. Et ad certos dies & loca, quæ vos vel aliqui hujusm', duo vel plures vestrum (ut præd' est) ad hæc provideritis, sup' præmissis faciatis Inquisition', & præmissa omnia & singula audiat' & terminetis, ac ea faciatis & expleatis in forma præd' inde quod ad Justitiam

Indictamenta capere. Processus faciend'.

Ad audiendum & terminandum.

Exceptio.

tiam pertinet, secundum Legem & consuetudinem regni nostri Angliæ: Salvis nobis Amerciamentis, & aliis ad nos inde spectantibus.

To the
Sheriff.

Mandamus etiam tenore presentium Vicecomiti nostro Cantabrigiæ, quod ad certos dies & loca (quæ vos vel aliqui hujusmodi, duo vel plures vestrum, ut præd' est, ei, ut præd' est, sciri feceritis) venire faciat cor' vobis, vel hujusm' duobus vel pluribus vestrum (ut dict' est) tot' & tales probos & legales homines de Balliva sua, (tam infra Libertates quam extra) per quos rei veritas in præmissis melius sciri poterit & inquiri.

To the
Custos
Rotulor.

Assignavimus deniq; te præfatum Johan. Cutts, Militem, Cust. Rot. Pacis nostræ in dicto Com. nostro. Ac propterea tu, ad dies & loca præd', Brevia, Processus, & Indictamenta præd', coram te & dictis sociis tuis venire facias, ut ea inspiciantur, & debito fine terminentur, sicut præd' est. In cujus rei testimonium, &c. Datum, &c.

The same in English.

GEORGE, &c. To Our Well beloved and Faithful King, Lord Keeper of the Great Seal of England, and — — Treasurer of England, &c. Greeting. Know ye that We have assigned you, and every one of you, jointly and severally, our Justices to keep our Peace in the County of Cambridge; and to keep and cause to be kept all Ordinances and Statutes made for the good of the Peace, and for Conservation of the same, and for the quiet Rule and Government of our People in all and every the Articles thereof, in our said County, (as well within the Liberties as without) according to the Force, Form, and Effect of the same; and to chastise and punish all Persons offending against the Form of those Ordinances, or Statutes, or any of them, in the County aforesaid, as according to the Form of those Ordinances and Statutes shall be fit to be done; and to cause to come before you, or any of you, all those Persons who shall threaten any of the People in their Person, or in Burning their Houses, to find sufficient Security for the Peace, or for the Good Behaviour towards Us and the People; and if they shall refuse to find such Security, then to cause them to be kept safe in Prison until they find such Security: We have also assigned you, and every Two or more of you (whereof any of you the said A.B.C. shall be one) our Justices to enquire by the Oath of good and lawful Men of the County aforesaid, by whom the Truth may be better known, of all and all Manner of Felonies, Witchcrafts, Inchantments, Sorceries, Magick Art, Trespasses, Forestallings, Reagratings, Ingrossings, and Extortions whatsoever; and of all and singular other Misdemeanors and Offences, of which Justices of Peace may or ought lawfully to enquire, by whomsoever and howsoever done or perpetrated, which hereafter shall happen howsoever to be done or attempted in the County aforesaid; and of all those who in the County aforesaid have either gone or ridden, or hereafter shall presume to go or ride in Companies with armed Force against the Peace, to the Disturbance of the People; and also of all those who in like Manner have lain in wait, or hereafter shall presume to lie in wait, to maim or kill our People; and also of Inn-holders, and of all and singular other Persons who have offended or attempted, or hereafter shall presume to offend or attempt in the Abuse of Weights or Measures, or in the Sale of Victuals, against the Form of the Ordinances or Statutes, or any of them, in that Behalf made for the common Good of

of *England*, and the People thereof in the County aforesaid; and also of all Sheriffs, Bailiffs, Stewards, Constables, Gaolers, and other Officers whatsoever, who in the Execution of their Offices about the Premises, or any of them have unlawfully demeaned themselves, or hereafter shall presume unlawfully to demean themselves, or have been or hereafter shall be careless, remiss or negligent in the County aforesaid. And of all and singular Articles and Circumstances, and all other Things whatsoever, * by whomsoever and howsoever ^{* Note, How is neither Person, Time, nor Place excepted.} done or perpetrated in the County aforesaid, or which hereafter shall happen howsoever, to be done or attempted in any wise more fully concerning the Truth of the Premises, or any of them: And to inspect all Indictments whatsoever so before you or any of you taken or to be taken, or made or taken, before others, late Justices of the Peace in the County aforesaid, and not as yet determined; and to make and continue the Process thereupon against all and singular Persons so indicted, or which hereafter shall happen to be indicted before you, until they be apprehended, render themselves, or be outlawed: And to hear and determine all and singular the Felonies, Witchcrafts, Inchantments, Sorceries, Magick Arts, Trespasses, Forestallings, Regratings, Ingrossings, Extortions, Unlawful Assemblies, Indictments aforesaid, and all and singular other the Premises, according to the Laws and Statutes of *England*, as in like Case hath been used or ought to be done: And to chastise and punish the said Persons offending, and every of them for their Offences, by Fines, Ransoms, Amercements, Forfeitures, or otherwise, as ought and hath been used to be done according to the Laws and Customs of *England*, or the Form of the Ordinances and Statutes aforesaid.

Provided always, That if a Case of Difficulty upon the Determination of any of the Premises shall happen to arise before you, or any two of you, or more of you; then you, nor any Two or more of you do proceed to give Judgment therein, except it be in the Presence of one of the Justices of the one or the other Bench, or Justices of Assize in the County aforesaid.

And therefore We command you and every of you, That you diligently intend the Keeping of the Peace, Ordinances, Statutes, and all and singular other the Premises; and at certain Days and Places which you, or any such Two, or more of you, as is aforesaid, shall in that Behalf appoint, ye make Inquiries upon the Premises, and hear and determine all and singular the Premises, and perform and fulfil the same in Form aforesaid, doing therein that which to Justice appertaineth, according to the Law and Custom of *England*: Saving to us the Amercements, and other Things to us thereof belonging.

And we command, by Virtue of these Presents, the Sheriff of the said County of *Cambridge*, that, at certain Days and Places which you, or any such Two or more of you, as aforesaid shall make known to him, as aforesaid, he cause to come before you, or such Two or more of you, as aforesaid, such and as many good and lawful Men of his Bailiwick (as well within Liberties as without) by whom the Truth in the Premises may be the better known and inquired of.

Lastly, We have assigned you the said *John Cuts* Knight, Keeper of the Rolls of the Peace in the said County. And therefore you shall cause to be brought before your self and your said Fellows, at

the said Days and Places, the Writs, Precepts, Processes, and Indictments aforesaid, that the same may be inspected, and by a due Course determined, as aforesaid. In Witness whereof, &c.

Note. By this last Clause the Keeper of the Rolls shall have the Custody of Indictments, Presentments, Bills, Recognizances, and such like Records of Sessions; but not the Custody of Records of Riots, Precepts of Peace, or other special Records, or other Records not pertaining to the general Sessions.

§ 3. H
4 Indict
P. 1711
The Commission of the Peace was, when Justice Fitzherbert and some others wrote, incumbered with many Statutes, and stuff with vain Repetitions, and many Corruptions crept therein by the Mistaking of Clerks: For Amendment whereof all the Judges of England were assembled, Mich. 32 & 33 Eliz. and upon Perusal of the former Commission of the Peace, and often Conference within themselves, resolved upon a Reformation of the former, with divers Additions and Alterations as it standeth at this Day both in Matter and Method.

§ 4. This Commission hath two Parts, containing the Power of the Justices of Peace.

The first *Assignavimus* of the Commission doth give Power to any one Justice of the Peace (more, or all) to keep, and cause to be kept the Peace, and all Ordinances and Statutes made for the Conservation of the Peace, and for the quiet Government of the People: As namely the Statutes made for *Hue and Cry after Felons*; and the Statutes made against *Murderers, Robbers, Felons, Night-walkers, and Affrayers, Armour worn in terrorem, Riots, Forcible Entries*, and all other Force and Violence; all which are directly against the Peace. The Particulars whereof you shall find more fully hereafter, and most of them under their proper Titles.

By this first Clause in the Commission, the Justices of Peace have as well all the antient Power touching the Peace which the Conservators of the Peace had by the Common Law, as also that whole Authority which the Statutes have since added thereto.

The Means which the Justices of Peace must use for the Keeping of the Peace, and for the Execution of these Statutes, are as followeth.

Warrant. To prevent the Breach of the Peace, he may send his Warrant for the Party, and may take sufficient Sureties of him (by Recognizance) for Keeping the Peace, or for the Good Behaviour, (as the Case shall require): And may send the Party to the Gaol for not finding such Sureties.

But for these Statutes made for the Peace, they are to be executed according to such Order as themselves do deliver; wherein if no Power at all be expressly given to any one Justice of Peace alone, then can he not otherwise compel the Observation thereof than by Admonition only: In which Behalf if he shall not be obeyed, he may prefer the Cause at the Sessions, and work it to a Presentment upon the Statute, and so (by the Help of his Fellow-Justices) to hear and determine thereof as Law requireth.

Ed. 3.
cap. 11.
And here note, That whereas before the Making the Statute Ed. 3. cap. 11. there were no Justices, but only Conservators of the Peace, (as is before shewed:) And whereas by the Commission of the Peace, presently after, and to this Day, the Justices of Peace had, and still have, the Statute of Winchester given them in Charge, to execute the same, which Statute of Winchester (being made E. 1.)

E. 1.) was long before there were any Justices of Peace. By this it may appear, that the King by his Commission, may commit the Execution of the Statutes and Laws to whom he shall please. And so also a Justice of Peace, by Virtue of the Commission, may execute any Statute whereunto he shall be enabled by the said Commission, although there shall be no such expresse Power given to him so to do by the Words or Letter of the same Statute.

§ 5. The second *Assignavimus* in the Commission doth give Authority to any two Justices of the Peace (or more, the one being of the *Quorum*) in these five Things following:

1. To enquire (by a Jury) of all Offences mentioned within the *Jury* Commission.

2. To take and view all Indictments or Presentments of the Jury.

3. To grant out Procefs against the Offenders, thereby to cause them to come and answer.

4. To hear and try all such Offences (upon any former or future Indictments taken before themselves, or before any other Justices of the Peace) after the Offenders are come in.

5. To determine thereof, by giving Judgment, and inflicting Punishment upon the Offenders according to the Laws and Statutes; (*viz.*) By Fine, Imprisonment, or otherwise according to Law: But not to award any Recompence to the Party wronged, otherwise than by Persuasion.

But all the Business included within the second *Assignavimus* belongeth to the Sessions of the Peace. Assignavimus

§ 6. Note also, That there are divers Statutes which be not specified within the Commission, and yet are committed to the Charge and Care of the Justices of Peace; but all such Statutes which do give expressly any Power or Authority to the Justices of the Peace, are to them a sufficient Warrant and Commission of themselves, although they be not recited in the Commission; and all such Statutes are also to be executed by them, according as the same Statutes themselves do severally prescribe and set down.

And for that most of the Business of the Justices of Peace doth consist in the Execution of such Statutes as are committed to their Charge, (whether they be specified in the Commission, or not specified there) the Numbers of which Statutes are exceedingly increased of late, therefore to give some little Help to such Justices of Peace who (being destitute of the Assistance of such as are learned in the Laws) are daily to administer Justice, and to execute their Office at home, and out of their Sessions; I have for their better Ease herein, endeavoured to set down particularly the several Parts and Branches of every such Statute by it self, under their proper Titles, with further References to the Statutes themselves at large, or to the Abridgments.

CHAP. VI. See Chap. 173.

§ 1.
Their
Power

THE Power and Authority of the Justices of Peace as well by the said Commission as by the Statutes, is in some Cases ministerial, and in other Cases judicial.

Ministerial,

Ministerial, when he is thereunto commanded by an higher Authority.

A *Supplicavit*, out of the Chancery or King's Bench, for the taking of Surety for the Peace, or Good Behaviour. See As upon hereof Tit. *Surety of the Peace*.

A Writ upon the Statute of *Northampton*, upon a Forcible Entry. See hereof Tit. *Forcible Entry*.

In the Execution of which two Writs, the Justice of Peace is to proceed no farther, or otherwise, than he is authorized by such Writ; and is also to return the Writ, and to certifie his Doings therein, into the Court whence the Writ came.

So upon a *Certiorari* out of any of the Higher Courts at *Westminster*, directed to the Justices of Peace (or to any of them) to certifie any Recognizance, Indictment, or other Record taken before him, or them, or any of them; or in his or their Hands; of which see more *postea*.

§. 2. But in all other Cases the Power of the Justices of Peace seemeth to be absolute, so as they, and every of them may proceed *ex Officio*, and as a Judge.

Discretion. And yet for that all considerable Circumstances can neither be comprehended in the Commission, nor foreseen at the Time of the Making of the Statutes, therefore some Things are referred to the Consideration of the Justices of Peace, and left to be supplied by them in their Discretion.

The Commission of the Peace (in it self) doth leave little or nothing to the Discretion of the Justices of Peace, but doth limit them to proceed *secundum Leges, Consuetudines, Ordinationes & Statuta*: And indeed to leave too much to Discretion, were to open a Gap to Corruption.

But by some late Statutes some Things are referred to the Discretion of the Justices of Peace; some out of Sessions, and some at their Sessions.

I will here only set down some Particulars of such Things as are referred to their Discretions out of their Sessions.

§. 3. *Some things referred to the Discretion of one Justice of Peace out of the Sessions, which you may more fully see hereafter in this Book, in the several Titles here under written.*

ONE Justice may compel any Person meet in his Discretion to be bound an *Apprentice*.

5 El. 4. One Justice of Peace may cause all such Persons as be meet to *Labour*, labour, by his Discretion to work in *Harvest and Hay-time*.

2 E. 6. 10. *Malts* that be deceitful may be sold, &c. at such reasonable Prices *Malt*, as one Justice of Peace in his Discretion shall think expedient.

43 El. 7. *Trespassers in Corn, Orchards, Hedges, or Woods*, which in the *Trespass* Discretion of the Justices are not thought able to give Satisfaction, shall be *whipped*.

17 E. 4. 4. One Justice of Peace may hear and determine by Examination, or *Tiles*, otherwise, by his Discretion, the Offences committed in *Tile-making*.

§. 4. *Some Things referred to the Discretion of two Justices of Peace out of the Sessions.*

5 E. 5. 25. TWO Justices may allow and discharge *Alehouse-keepers*, as they shall think meet, but they ought to allow none but such as be capable and needful for the Place.

5 E. 6. 25. Two Justices may take Recognizance of Alehouse-keepers for keeping good Orders, &c. according to *their Discretions*.

Clothiers, their Work-folks imbezilling any Part shall be punished, &c. by the *Discretion of two Justices*.

Two Justices may grant their Warrant to call before them any Person or Persons which *in their Discretions* shall be thought fit to discover any Offence in the Making of deceiveable Woollen Cloth, &c. 21 Jac. c. 18.

Servants, &c. assaulting their Master, may be imprisoned for one *Labourers* Year, or less, at the *Discretion of two Justices*.

Two Justices may (*by their Discretion*) compel Women to serve, *Servants*, and for such Wages, and in such sort, as they think meet.

Two Justices may tax others of the County *by their Discretions* Plague, towards the Relief of Places infected, &c.

43 El. 2. Two Justices may tax any in the Hundred (*by their Discretions*) *Poor*, towards the *Relief of the Poor* of any Town that is over-charged.

Two Justices may dispose of all Forfeitures to grow upon the *Rogues*, Statutes of Rogues, *at their Discretions*, &c.

Two Justices may assess (*according to their Discretions*) proportionably all the Parishes within the Hundred, towards a Contribution for the Parties charged upon a Robbery, &c.

Two Justices shall take Order (*by their Discretions*) to set *poor Souldiers*, *Souldiers*, &c. to Work that cannot get Work; and for want of Work, may tax the Hundred (*by their Discretions*) for the Relief of such Souldiers, &c.

Two Justices may fine (*by their Discretions*) the head Officers in *Weights*, Boroughs and Market-Towns that do not view, &c. *all Weights and Measures*, or do not break and burn the Defective.

Two Justices may fine (*by their Discretions*) all Buyers and Sellers with unlawful *Weights and Measures*.

There be some other Statutes, and some other Cases, wherein the *Discretion of the Justices of Peace* out of their Sessions is tolerated: But the Counsel of Cicero herein is to be observed, *Sapientis est Judicis cogitare tantum sibi esse permissum, quantum sit commissum ac creditum*.

§. 5. Also the Sayings of the Reverend Judge, in his fifth Part, in *Rook's* Co. 5. 101, Case, and in his tenth Part in *Knightly's* Case) are worthy of Observation: sc. That *Discretion* is a Knowledge or Understanding to discern between Truth and Falshood, between Right and Wrong, *Discretion defined.* between Shadows, and Substance, between Equity and colourable Glosses and Pretences, and not to do according to our Wills and private Affections, for *talis discretio discretionem confundit*. And therefore in both the recited Cases it was holden that though the Word in the Commission of Sewers do give Authority to those Commissioners to do *according to their Discretions*, that yet their *Discretion* ought to be limited and bounded with the Rules of Reason, Law, and Justice, and their Proceeding must be *secundum Legem & Consuetudinem Angliæ*; and so of other like Commissioners. Again, *Discretion*, saith he, is *scire vel discernere per Legem quid sit justum*; viz. to discern by the right Line of Law, and not by private Opinion, Co. L. 227. And therefore every Judge, Justice, (or Commissioner) ought to have *duos Sales viz. Saleem Sapientia ne sit insipidus*; & *Salem Conscientia, ne sit diabolus*.

And (as *M. Lambert* well said) no way better shall the *Discretion* of a Justice of Peace appear, than if he (remembering that he is *Lex loquens*) shall contain himself within Law, and shall not use his Discretion, but only where both the Law permitteth, and the present Case requireth.

In all Cases therefore where the Statutes refer the Trial of Offenders (or Hearing and Determining of Offences) to the *Discretion of the Justice* or Justices of Peace, out of Sessions, it is very requisite, that the said Justices take due Examination (of the Offenders themselves, and also of credible Witnesses) as well concerning the Fact it self as the Circumstances thereof; and upon Confession, or other due Proof of the Offence, then to proceed according to the Law and Justice.

But not to denounce or give Sentence before the Party be cited, and heard to answer for himself: For this Defence is allowed by God's Law. *Gen. 3. 9.* Adam, *Where art thou?* and *Gen. 4. 9.* *where is thy Brother Abel?* And in the Case of the five Cities, *I will go down and see.* *Gen. 18. 21.*

Note, That in all Cases where the Statute referreth the Trial, &c. to the *Discretion of the Justices*, the said Statutes themselves seem also to enable the said Justices of Peace to take the Examination of Witnesses, and that upon an Oath.

Note farther, That the Justices of Peace out of their Sessions, are now armed with far more ample Authority and Power than the ancient Conservators of the Peace were: For the Justices of Peace, have double Power given them; the one of Jurisdiction to convene the Offenders before them, (by their Warrant) and in divers Cases out of their Sessions) to examine, hear and determine the Cause; the other of Coercion (*sc.* after the Cause heard) to constrain them to the Obedience and Observance of their Order and Decree, (which notwithstanding must be according to the Rules of Law and Justice, as is aforesaid): Whereas the ancient Conservators of the Peace had no Jurisdiction or Authority at all, either to convene the Offender before them, or to examine hear or determine the Cause; but had only Coercion, or Punishment of an Offender in some few Cases, as you may see before, *chap. 1.*

6. 7. And here I must farther put the Justices of Peace in Mind, that their *Have no Authority out of their County, nor in Corporations.*
 Plo. 37. Authority and Power is limited, to be exercised only within the County or Counties where they are in Commission; but they must not intermeddle in any City there, which is a County of it self, nor in any City or Corporate Town there, (though it be no County of it self, but within the County which have their proper Justices of Peace within themselves by the King's Charter or Commission, especially if in such Charter there be any special Words of Prohibition, that the Justices of the Shire *non se intromittant*, &c.) except such Justice shall also be in Commission in such City or Town Corporate.

19. Lamb. 48. But in other Corporate Towns which have not their *proper Justices of Peace*, as also in all Liberties and Franchises (within the County) which have the Return of the Writs, but have not their proper Justices, there the Justices of the Peace of the County ought to execute their Authority, and that by the Words of their Commission.
 20H. 7. 6. 7. Crom. ib.

Again, if a Parish shall extend into two or more Counties, or if Part thereof shall lie within the Liberties of any City or Town Corporate (which have their proper Justices) and Part without; then as well the Justices of the Peace of every County, as also the Justices

See *hic*.
Tit. *Pow.*

(or Officers) of such City or Town Corporate, shall intermeddle only within their own proper and distinct limits and bounds, (*sc.* within so much of the said Parish, &c. as lieth within their several Liberties and Limits) and not in other Jurisdictions: For it shall be against Law and Reason, where Officers and Jurisdictions are several, that the one should intermeddle within the Jurisdictions of the other.

Co. 4. 46.

Ubi quis delinquit, ibi puniatur. See *hic* Tit. Homicide.

33 H. 8.

c. 6:

9 El. p. 12.

23 El. c.

10.

2 H. 34.

Neither shall any Justice of Peace deal in, or punish any Trespass, or other like Offence, committed in any other County against any penal Statute, though such Offender shall be brought before him, (see the Commission the first *Affig. & postea*, Tit. *Guns, Labourers, and Partridges*) except the Statutes shall especially enable them thereto as the Statutes 1 *Fac. & 7 Fac.* which do enable the Justice of the County where the Offence shall be committed, or the Offender apprehended, (See Tit. *Partridges*) and the like; or that it be for Matters of the Peace, or in Case of Felony. (See Tit. *Affrays, and Felony*.)

By the Statute of 2 H. 5. 4. Justices of Peace may send their Writs for fugitive Labourers to every Sheriff of England.

Neither shall any Justice of Peace for the Time that he shall be out of the County (where he is in Commission) take any Recognizance, or any Examination, or otherwise to exercise his Authority in any Matter that shall happen within the County, where he is in Commission; neither can he cause one to be brought before him out of the County where he is in Commission, into the other County; for being out of the County where he is in Commission, he is but as a private Man. *Vide hic* Tit. *Affray, Imprisonment, Robbery and Warrants, and Plo. 37. & 13 E. 4. 8.*

In the Case of Helier against the Hundred of Benhurst, it was resolved that where a Person robbed in one County, and made Oath before a Justice of the Peace of the same County being in London, that he might well take the Oath where he was, although out of the County, for he acted therein not *virtute officii*, but as a Person designed to a particular End and Purpose, and the Plaintiff had his Judgment: But they held that if he acted or did any Thing *virtute officii* out of his County it was void.

And yet a Sheriff being out of his County may make a Panel, or may make Return of any Writ. 9 H. 4. 1.

Now my Purpose is to set down more particularly what Things the Justices of Peace, out of their Sessions may do in the Execution of their Commission, or of the Statutes wherewith they are charged. And herein you must observe that some Things are permitted to be executed by any one, two, or more Justices; and some other Things are more especially appointed and appropriated (by some Statutes) to some one certain Justice of Peace, or two, or more Justices; either in regard that such Justice or Justices is or are next the Place, or are of the *Quorum*, or the like.

And here Note, that whatsoever any one Justice of Peace alone may do (either for the Keeping of the Peace, or in other Execution of the Commission or Statutes) the same also may lawfully be done and performed by any two or more Justices.

Co. 4. 46.

But where the Law giveth Authority to two, there one alone cannot execute this: For *Una persona non potest supplere vicem duarum* & plus vident oculi quam oculus. See Co. 5. 94. & Plo. 393. a. b. Co. L. 181.

And yet where a Statute appointeth a Thing to be done by two Justices of Peace (or more,) if the Offence be any Misdemeanor or Matter against the Peace, there, upon Complaint made (of the Offence) to any one of those Justices of Peace, it seemeth that one of those Justices may grant his Warrant to attach the Offender, and to bring him before the same Justice or any other Justice, to find Sureties for his Appearance at the next general Sessions, there to make Answer to such his Offence; or else he may bind the Offender to the Good Behaviour, and so to appear at the next Sessions, if the said Justice shall see any just Cause so to do. But one Justice of Peace alone may not hear and determine the same.

Also when Things by Statute are appropriated to one certain Justice or more, then such Justice or Justices are to pursue their Authority accordingly: And yet if such Justice or Justices shall therein joyn with any other Justice of the same County, it may seem no less lawful and warrantable; *tamen quare, & vide c. 11. 92.* Where an Authority is given to four, or to one of them; if two of them shall execute this, it seems they have not pursued their Authority. So if an Authority be given to three *conjunctim & divisim*, if two of them do it in the Absence of the Third, it is void, *Dyer 62.* for that the Authority is not pursued. *Bar Co. L. 181. b. taketh a Difference where the Thing is pro bono publico, and where pro privato; as if a Sheriff upon a Capias maketh his Warrant to 4 or 3 jointly or severally to arrest the Defendant; two of them may arrest him, for that it is for the Execution of Justice, which is pro bono publico, and therefore shall be more favourably expounded than when it is only for private.*

Besides, there is a general Rule put in *Stradling's Case* (in *Plo.*) *Plo. 206. See Co. 11. 59, & 64.* That when a Thing is appointed by any Statute to be done by or before one Person certain, that such Thing cannot be done by or before any other, but that it ought to be done as the Statute hath appointed; and by such express Designation of one or Power, given to one, all others are excluded.

And yet whereas by the Statute 18 *Eliz.* the Order to be taken for a Bastard Child is appropriated to two Justices of Peace (one being of the *Quorum*) in or next unto the Parish where such Child shall be born; if two such Justices cannot agree upon the reputed Father (or in making such Order as the Statute requireth, or in other Execution of that Statute) *Quare* what is to be done. I have known the Case lately moved to the Judges of Assize, who thought it fit, that such Difference between the two Justices of Peace should be referred to the Hearing of the whole Bench, and the Matter to be re-examined by them; and what Order should be therein set down by the Bench, the same to stand good. *Vide Tit. Bastard.*

But in such Things appropriate to some one or more Justices of the Peace, if without such Justice or Justices, all (or any of) the Residue of the Justices of that County shall intermeddle therein, such their Doings seem no ways warrantable, but their Proceeding to be *Coram non Judice*, and that their is no Necessity to obey therein, as being no lawful Judges of the Cause,

Accessaries. See Chap. 161.

CHAP.

CHAP. VII.

Alehouses. See Inn-holders, and Chap. 176. in Conditions of Recognizances.

The Authority of Justices of Peace, as well in as out of Sessions touching Alehouses.

§. 1.
Inns and
Alehouses,
their Use.

THE true and principal Use of *Inns, Alehouses* and *Viſtualling-houses*, is two-fold; *ſc.* either for the Relief and Lodging of wayfaring People travelling from Place to Place about their necessary Business, or for the necessary Supply of the Wants of such poor Persons as are not able by greater Quantities to make their Provision of Victuals: And is not meant for Entertainment and Harboursing of lewd or idle People, to spend or consume their Money or Time there, (as appeareth by the Preamble of the Statute made 1 Jac. Reg. c. 9.)

But Abuses crept in, and Disorders multiplied by the Increase of them, as was perceived so long since as 11 H. 7. c. 2. whereby Power was given to two Justices of the Peace to lessen their Number; yet the Mischief arising by their Increase and Licentiousness growing every Day more considerable, a good and profitable Law was made 5 & 6 E. 6. c. 25. for the Redress of that general Inconvenience without Working that Reformation that was desired and intended.

And therefore to prevent the Mischiefs and great Disorders happening daily by the Abuses of such Houses, divers good and profitable Laws are made for the Redress thereof, as followeth:

1 Jac. 9.
21 Jac. 7.
1 Carol.

Every Keeper of a Tavern (Keeping also an Inn or Viſtualling in his House) and every *Alehouse-keeper, Inn-keeper, and Viſtualler*, which shall suffer any Townsman, or any Handicraftsman, or Labourer, working in the same City or Town, to remain and continue Drinking in their said House, (except such as shall be invited thither by a Traveller, and shall accompany him during his necessary Abode there; and except Handicraftsmen, Labourers and Workmen, in Cities, Towns Corporate and Market-Towns upon the Working-day, for one Hour at Dinner-time to take their Diet there, or sojourning or lodging there; or except they be allowed by two Justices of Peace) the said Offence being seen by any Justice of Peace within his Limits, or being confessed by the Offender before the Justice of Peace, Mayor or Bailiff, or Head-Officer, or being proved before any Justice of Peace by one Witness upon Oath; every such Taverner, Alehouse-keeper, &c. shall forfeit for every such Offence 10s. to the Use of the Poor.

§. 2.
Tavern

1 Jac. 9.
1 Car. 1.
c. 4.

And note, that the voluntary Confession (before the Justice of Peace, or other Person authorized to minister the Oath) of any Offender against either of the Statutes of 1 Jac. c. 9. or 4 Jac. c. 5. shall suffice to convince the Person so offending; and after such Confession, the Oath of the Party so confessing shall be taken, and be a sufficient Proof against any other offending at the same Time. 21 Jac. cap. 7.

And yet note, That wheresoever any Conviction shall be before the Justice of Peace, by or upon the Oath or Testimony of any other

Person than the Delinquent himself, there the Justice of Peace must first send for or convene the Delinquent before him, to make answer, &c. and to hear and examine him of the Offence, &c. for it may be, that he can make sufficient Defence or Excuse of the Fact. And this was the Direction of Sir *Nicholas Hide*, Lord Chief Justice of the King's Bench, and well agreeth with the Rule here before, *chap. 2. Qui aliquid statuerit, parte inaudita altera, equum licet statuerit, haud equus est iudex.*

Note, That the Statute 1 Jac. 9. is made perpetual by 21 Jac. 7. and yet the Statute of 21 Jac. 28. amongst 57 other Statutes recites the Title of the Statute 1 Jac. 9. and doth continue the same with other Statutes until the End of the first Session of the next Parliament, so that unless the Statute of 21 Jac. 7. doth perpetuate it, it is expired for ought I find.

§. 3.
Tiplers.

Every Person who shall continue Drinking in any Inn or Alehouse, ^{4 Jac. 5.} &c. in the Town where he then dwelleth, (contrary to the former Statute made *primo Jac.*) the said Offence being seen by any Justice of Peace, or being proved before him, as aforesaid, such Person shall forfeit for every such Offence three Shillings four Pence. ^{21 Jac. 7.}

If any other Person (wheresoever his or their Habitation or Abiding ^{1 Car. 4.} be) shall be found (by View of any Justice of Peace, or by his own ^{21 Jac. 7.} Confession, or Proof of one Witness) to be Tipling in any Inn, Alehouse or Victualling-house, every such Person shall be adjudged to be within the said Statutes of 1 Jac. c. 9. and 4 Jac. c. 5. as if he inhabited and dwelt in the City, Town Corporate, or other Town or Village, where the said Inn, Alehouse, or Victualling-house is or shall be, where he shall be so found Tipling, and shall incur the like Penalty; and the same to be in such Sort levied and disposed as in the said Act is expressed concerning such as there inhabit. And the voluntary Confession of such an Offender shall suffice to convince himself; and, after his Oath, shall be a sufficient Proof against any other offending at that Time. ^{21 Jac. cap. 7.}

He that confesseth the Fact, and thereby is convicted, his Oath shall be a sufficient Proof against any other. ^{21 Jac. c. 7.}

Now these Statutes prohibit, not only the Continuing Drinking in those Inns and Alehouses, &c. for longer Time than for the necessary Abode; but also all Tipling there, viz. the vain Use of drinking Healths there, &c. For these Houses were not ordained, neither are they to be suffered, for any such Uses; but only for the necessary Relief of Travellers, and to supply the Wants of the Poor, as aforesaid.

§. 4. Every Taverner (keeping also an Inn or Victualling in his House,) ^{1 Carol. 4.} and every Inn-keeper, Alehouse-keeper, and other Victuallers, who shall suffer any Person (wheresoever his Dwelling or Abiding be) to ^{1 Jac. 9.} tipple in the said House contrary to the true Intent of any of the said former Statutes, shall be adjudged within the Statute 1 Jac. c. 9.

So that now by these Statutes, no Person may tipple in any such Tavern, or in any Inn, Alehouse, or Victualling-house, in the same Town where he dwelleth, nor Dwelling within two Miles thereof, except he be a Traveller: And so Sir *Francis Harvey* Knight, delivered it in his Charge at Cambridge Summer Assize, *An. 1629.* But the Stat. 21 Jac. & 1 Caroli, forbids all Tipling in such Houses, wheresoever they be dwelling or abiding, and by whomsoever it be.

§. 5.
Drunkennes.

Any Justice of Peace in any County (and any Justice of Peace or ^{4 Jac. 5.} other Head-Officer in any City or Town-Corporate, within their Li- ^{21 Jac. 7.} mits)

mits) shall have Power (upon his own View, Confession of the Party, or Proof of one Witness upon Oath) to convince any Person of Drunkenness, whereby such Persons so convicted shall incur the *Forfeiture of five Shillings* for every such Offence, to be paid within one Week next after such Conviction into the Hands of the Church-wardens of the Parish where the Offence shall be committed, &c. And if the Offender be not able to pay the said Sum of *five Shillings*, then he shall be committed to the Stocks for every such Offence, there to remain by the Space of *six Hours*.

4 Jac. 5. And for the *second Offence of Drunkenness*, every Person convicted ^{2d Offence.} thereof, as aforesaid, shall be bound with two Sureties in the Sum of ten Pounds, with Condition for the Good Behaviour, by any one Justice of Peace, or other Head-Officer aforesaid, by 21 Jac. c. 7. and for Want of such Sureties to be sent to the Gaol.

Every Constable, Church-warden, Headborough, Tithingman, Aleconner and Sideman shall in their several Oaths incident to their several Offices be charged to present the Offences contrary to that Statute 4 Jac. 5. and so likewise to present Offences against 1 Jac. 9. and 4 Jac. 5. 21 Jac. 7.

No Person shall be impeached or molested for any Offence against that Statute, unless he shall be thereof presented, indicted, or convicted within three Months after the Offence, and shall be but once punished for each Offence, 4 Jac. 5.

Now, to know a drunken Man the better, the Scripture describeth them to stagger and reel to and fro, Job. 12. 25. Isa. 24. 20. And so where the same Legs which carry a Man into the House cannot bring him out again, it is a sufficient Sign of Drunkenness.

1 Jac. 9. Every Justice of Peace (within his Limits) hath Authority to minister the said Oath to such Witnesses. 21 Jac. cap. 7.

4 Ja. p. 5. All and every the Forfeitures aforesaid shall be to the Use of the Poor § 6. of the Parish where such Offence shall be committed; and the said For- ^{The For-}feitures. 21 Jac. 7. feitures are to be levied by Distress and Detainer of the Offender's Distress. 1 Jac. 9. Goods, (and after six Days by Sale thereof, &c.) by the Constables or Church-wardens of the same Parish, upon a Warrant from any one or more Justices of Peace, under his or their Hand and Seal.

The said Forfeitures of the Taverners, Alehouse-keepers, Inn-keepers and Victuallers, being distrained for as aforesaid, if within six Days next ensuing they shall not pay the said Forfeiture; then may the Constables or Church-wardens, by Virtue of the said Warrant, appraise and sell the said Distress; but they must deliver the Surplusage to the Party of whom the Distress was taken. 1 Jac. 9. P. 7.

1 Jac. 9. P. 7. For every Offence aforesaid, the Alehouse-keeper, Inn-keeper, and ^{Commit-}ment for other Victualler, for Want of sufficient Distress to be taken for such ^{Want of} Distress. Forfeitures, shall (by any one Justice of Peace) be committed to the common Gaol, there to remain until the said Penalty be paid.

4 Jac. 5. Every Townsman, or other Person whatsoever, &c. that shall con- ^{Stocks.} 1 Jac. 9. tinue Drinking, or be found Tipling in any Inn, Alehouse, or other 21 Jac. 7. Victualling-house, contrary to the Statute, and he being convicted of it according to the Statute of 1 Jac. 9. (for Want of sufficient Distress, and not being able to pay the said Forfeiture of three Shillings four Pence) shall be set in the Stocks for every such Offence four Hours, (upon Warrant or Commandment from any one such Justice of Peace.)

1 Jac. 9. If the Constable and Church-wardens shall neglect to levy, or shall ^{§ 7.} not levy the said several Forfeitures, of Alehouse-keepers, &c. suffer- ^{Default or} Neglect of ^{ing Officers.}

ing Tipling in their Houses, or for their Measure of Ale or Beer; or in Default of Distress shall neglect by twenty Days to certify the same Defaults of Distress to the Justice of Peace; then every such Constable and Church-warden shall forfeit for every such Default 40 s. to the Use of the Poor, to be levied by Distress (of the Offender's Goods,) by like Warrant to any other indifferent Person, from any one (or more) Justices of Peace, &c. under their Hand and Seal: The said Distress to be taken and detained for the said Forfeiture for the Space of six Days; within which Time, if Payment be not made, then the same Goods to be presently appraised and sold, and the Surplusage to be delivered to the Party, &c. And for Want of sufficient Distress, such Constables and Church-wardens to be (by any such Justice of Peace, &c.) committed to the common Gaol, there to remain until they have paid the same Forfeiture. And,

Also if any Constable, or other inferior Officers of the Parish, shall neglect to execute the Justices Warrant for the due Correction of, or for the Levying of the Penalties of Offenders in Drunkenness; such Constable, &c. shall forfeit 10 s. to the Use of the Poor, &c. to be levied as aforesaid. 4 Jac. 5.

§. 8.
Refusing
to lodge.

If a common Inn-holder or Alehouse-keeper will not lodge a Travel-^{Br. Acc. Sur. 92. 8c 76. E. 4. 3.}ler, any Constable (or Justice of Peace) may compel him thereto; but how the Officer shall compel him *Quare*: It seemeth that all the Officer can do, is, either to cause such Alehouse-keeper to be suppressed; or else to present such Offence at the Assizes or Sessions of the Peace, that so such Offender may be thereupon indicted. See the Commission.

And at a Lent Assizes, *Anno Domini 1622.* Sir James Ley (Knight and Baronet, Lord Chief Justice of the King's Bench) delivered it in his Charge, that an Inn-keeper, or Alehouse-keeper, offending herein, might be indicted, fined and imprisoned for the same; or else, that the Party grieved might have his Action *sur le Case* against the Inn-keeper or Alehouse-keeper refusing to lodge him. *Vide Cro. 50. and 4 H. 7. 22.*

But no Inn-holder, Alehouse-keeper, or other Victualler, shall be compelled to sell, or let any Traveller or other to have any Victuals or Lodging, except the Party shall first tender and pay ready Money for the same, if it be required. 10 H. 7. 8. 5 E. 4. 3. Co. 9. 87. b.

§. 9.
Two Ju-
stices.
Licence.

Any two Justices of the Peace (the one being of the *Quorum*) may ^{Ed. 6. 29. P. 2.}allow the Keeping of any common Alehouse, or Tipling-house, and shall (from Time to Time) take Bond with Surety by Recognizance of such Alehouse-keepers, as well against the Using of unlawful Games, as also for the Keeping of good Rule and Order in their Houses, according to the Discretions of the same Justices.

And yet note that the Words of the Statute do not warrant the Justices of Peace to allow Alehouse-keepers at their Pleasure; but the Words are thus: None shall be admitted to keep a common Alehouse, &c. but such as shall be allowed in open Sessions, or by two Justices, the one of the Quorum, &c. And therefore if two such Justices out of the Sessions shall allow more than are needful, or such as are disabled, or such as have been suppressed; the Justices may be punished, the rather for that the Number of unnecessary Alehouses are Causes of much Disorder, poor labouring Men and Servants resorting thither, and there mispending both their Money and Time.

There

There shall be paid for such Recognizance but xii d. and the said Justices shall certify the same Recognizance at the next Quarter Sessions (upon Pain of five Marks). *Ibidem.*

5 E. 6. 25. Any two Justices of Peace (the one being of the *Quorum*) may remove, discharge, and put down any Alehouse where they shall think meet.

5 & 6 E. 6. 25. The Justices of Peace in their Sessions by Presentment, Information or otherwise at their Discretion may inquire of Persons as be allowed to keep Alehouses, and that be bound by Recognizances if they have done any Acts whereby they have forfeited their Recognizance, and upon such Presentment or Information shall award Process to such Cause why they should not forfeit the same, and shall hear and determine the same in such Manner as by their Discretion shall be thought fit.

The Alehouse-keeper put down and discharged by any two such Justices of Peace cannot be allowed again by any other Two or more Justices of Peace, except it be in open Sessions, as Sir Peter Warburton delivered in his Charge at Cambridge Assises, Anno Dom. 1613.

5 E. 6. 25. Any two Justices of the Peace (the one being of the *Quorum*) may commit to Prison in the common Gaol (for three Days without Bail) those that keep common Alehouses, or that use common Selling of Ale or Beer, obstinately of their own Authority, without Allowance by two such Justices, or contrary to the Commandment of two such Justices. And the said two such Justices (before the Delivery of such Offenders) shall take Recognizance of them with two Sureties, that he or they shall keep no more a common Alehouse, or use commonly Selling of Ale or Beer, according to the Discretion of the same Justices, and shall certify such Recognizance, Discharge and Offence, at their next Quarter Sessions: Which Certificate shall be a sufficient Conviction in Law of the same Offence, without any farther Trial thereof to be had: And for such Offence the Fine of 20 s. shall be assessed in open Sessions. In Places where Forces are kept, any Person may use common selling of Beer as hath been used. 5 & 6 E. 6. 25. 3 C. 3.

But for that this former Law made 5 Ed. 6. hath not wrought such Reformation as was intended, it is farther enacted by another Statute made 3 Car. Regis, cap. 3. That if any Person shall upon his own Authority (not being thereunto lawfully licensed) take upon him, or her, to keep a common Alehouse or Tipling-house, or shall commonly use Selling of Ale, Beer, Cider, or Perry, that every such Person for every such Offence shall forfeit twenty Shillings to the Use of the Poor of the Parish where such Offence shall be committed; the same Offence being viewed by any Justice of Peace, Mayor, or other Head-Officer of any City or Town Corporate, within their Limits, or confessed by the Offender, or proved by the Oath of two Witnesses.

3 Car. 3. Every such Justice of Peace (or other Head-Officer aforesaid) have Power to minister an Oath to such Witnesses.

3 Car. 3. Also every such Justice (and other Head-Officer aforesaid) within their several Limits, may make their Warrant to the Constables or Church-wardens of the Parish where the said Offence shall be committed, to levy the same twenty Shillings by Distress of the Offender's Goods; and for Default of Satisfaction, within three Days next ensuing, the said Distress to be appraised and sold, and the Overplus to be delivered to the Offender: And this to be only for the first Offence. *Ibidem.*

1 Offence. If such Offender shall not have sufficient Goods whereby to levy ^{3 Car. 3.} the said *twenty Shillings by Distress*, or shall not pay the said *twenty Shillings* within six Days after such Conviction, then the said Justice (and other Head-Officer aforesaid) shall commit the said Offender to the Constable where the Offence shall be committed, or the Party apprehended, to be openly whipped. *Ibidem.*

Whipped. If the Constable, &c. shall neglect to execute the said Warrant, or ^{3 Car. 3.} do refuse, or do not execute upon the Offender the said Punishment of Whipping, the said Justice (or Officer) may commit the Constable, &c. to the common Gaol without Bail, until the said Offender shall be by him punished, as aforesaid, or until the said Constable, &c. shall pay forty Shillings to the Use of the Poor of the Parish. *Ibidem.*

2 Offence. The unlicensed Alehouse-keeper, for such his second Offence, shall ^{3 Car. 3.} be committed to the House of Correction for one Month. *Ibidem.*

3 Offence. And for every such Offence after, he shall be committed to the ^{3 Car. 3.} House of Correction, there to remain until he be delivered by Order from the General Sessions. *Ibidem.*

Provided that such Offender shall not be punished twice for the same ^{3 Car. 3.} Offence, &c. shall not be punished both by the Statute made, *An. 5 E. 6.* and by the Statute of *3 Caroli*.

Feme Covert. If a *Feme Covert* against the Will of her Husband, shall keep an Alehouse, or shall use common Selling of Ale or Beer without License, &c. the Husband is punishable therefore, and it seemeth the Wife also (by the Discretion of the Justices of Peace) may be imprisoned for such her personal and wilful Offence, until she shall find Sureties for her good Behaviour, and that she shall no more Use the same.

Also it seemeth (by the Letter of the Statute) that the Alehouse-^{E. 6. P. 1. 4.} keeper put down or discharged by two such Justices, if (contrary to their Command) he shall use common Selling of Beer or Ale again, though allowed by two other Justices of Peace out of the general Sessions, yet the two Justices that first discharged him may put him down again, and may commit him to the Gaol, for selling contrary to their Command.

And yet the Statute alloweth common Victualling, and Selling of ^{E. 6. P. 5.} Ale or Beer in Fairs, though unlicensed, &c. *3 Caroli 3.*

Brewers. *Brewers uttering or delivering any Beer or Ale to any unlicensed Alehouse-keeper, shall forfeit for every Barrel 6s. 8d. 4 Jac. c. 4.*

Not licensed. If any Alehouse-keeper which is *not licensed*, shall suffer Townsmen or any other Persons to tipple in his House, or shall break the Affize, &c. he is punishable for the same by the Statute made *primo Jac. c. 9.* and besides he may also be committed to Prison for three Days by Force of the Statute *5 Ed. 6. c. 25.* or *3 Car. 3.* for selling Beer, &c. without License. Also if any Townsman, or other Person, shall be found to be Tipling in any unlicensed Alehouse, such Persons are also punishable by the same Statute, made *primo Jacobi, cap. 9.*

Any two Justices of Peace may give Allowance to Labourers, &c. ^{2 Jac. 9.} for urgent and necessary Occasions to remain in an Inn, Alehouse, or Victualling-house.

§. 11. *Common Inns* are appointed for Travellers and wayfaring Men, and ^{Co. 8. 32.} therefore if any Inn-keeper shall suffer Persons inhabiting in the same Town, or any other Persons (contrary to the Statutes) to be usually Tipling in his House, such an Inn-keeper may be accounted as well an Alehouse-keeper as an Inn-keeper; and such Inn-keepers may be bound by Recognizance with Sureties for Keeping of good Order, and observing

ving Affize, as Alehouse-keepers are: And so Judge Warburton delivered it in his Charge at *Cambridge Assizes*, *An. Dom. 1613.* And therewith also agreed Sir *James Ley* and Sir *John Dodderidge*, in their severall Charges at *Cambridge Assizes*, *An. Dom. 1621.* for that such Inn-keepers (said they) do pervert the End, for which they were first appointed. Or else it seemeth they may be punished, or committed, as Alehouse-keepers without License, (by two Justices of Peace, as aforesaid): Or they may be indicted thereof at the Assizes or Sessions of Peace, as it seemeth by the Commission of the Peace.

Jo. Brakey de, &c. Inn-holder, &c. convicted for letting his Beer to farm to his Tapster for fourteen Shillings the Barrel, he paying but eight Shillings to the Brewer. Ord. 2. Sept. 9. Jac. Sess. Pac. Mid.

It was the Opinion of the Court in the Case of one T. Jennings, That the Keeping of an Inn gave no Warrant to sell Beer without other License. Ord. 6 Jan. 1 Car. lib. Sess. Pa. Mid.

Crom. 77. Also it hath been agreed for Law, That such Inns as have been erected since the Statute of 5 *Ed. 6. cap. 25.* and were not Inns before, ought to have License; and that such Inn-keepers are to be bound by Recognizance, with Sureties, for Keeping of good Orders, as Alehouse-keepers are.

And yet at *Lent Assizes*, *Anno Dom. 1621.* Sir *James Ley* delivered his Charge, That Inns were Hosteries by the Common Law, and that every Man might erect and keep an Inn or an Hostery, so as they were *probi homines*, Men of good Conversation, Fame and Report, dwelling in meet Places: But yet that they were not worthy of any Allowance or Licence under the King's Great Seal, &c.

And he delivered farther in his said Charge, That if such Inns or Hosteries be used *ad nocumentum populi Dom. Regis, &c. sc.* do keep any disorderly House contrary to the Law, or be more in Number than are needful, and to the Hindrance of other antient and well governed Inns; that then they may be thereof indicted at the Assizes, or Sessions of the Peace, and there may be either fined or suppressed. And Sir *James Ley* told me after at his Lodging in *Trinity College*, That this was the Opinion of all the other Judges, upon a late Conference had among themselves.

But such Inns or Hosteries, if they shall be inconvenient or disorder- ed, in respect either of the Inn-keeper, or of the Resort thither, or that the Place be unmeet, they are to be suppressed, upon an Indict- ment found at the Assizes or Sessions.

An. 1616. And if they shall suffer Townsmen or other Persons (usually) to tip- ple there, they are to be punished as Alehouse-keepers without Li- cense: For these Inns or Hosteries are to be allowed only for Travellers.

His Majesty, in his Speech in the Star-Chamber, hath justly excepted against the Abundance of Alehouses, and more specially against the infamous and blind Alehouses, as being Haunts for Robbers, Thieves, Rogues, Vagabonds, and other idle, loose and sturdy Fellows, who do loyter and enquire in these Places where they may have a Booty, or do a Mischief to the neighbouring Inhabitants: And therefore here I thought good to put the Justice of Peace in Mind, that in allowing of Alehouses they have Regard as well to the Person as the Place; for all Persons, especially infamous or defamed, are not fit to be allowed for Alehouse-keepers, neither are all Places meet for an Alehouse.

7 E. 6. 3. And therefore Alehouses to be allowed are meetest to be about the Midst of the Town; but not to be in any Blind or By-Corners (much less houses).

left in Woods or Places remote from Towns) where Thieves and Rogues may be harboured. Nor in Places out of or distant from the Town; except upon the River-side and where there is great Need, and the Persons well known. Resol. 36.

Bailiffs.

The Keeping of Taverns, Alehouses or Tipling-houses, by Bailiffs, Sergeants or other Minister is found generally mischievous, for when they Arrest any Person, upon Pretence of Favour, they carry them to their own Houses, and there lodge and entertain them so long Time as their Money lasts, and then and not before carry them to Prison; whereby both the Party arresting is many Times defrauded of his Debt, and the Person arrested under Colour of Liberty cheated of his Money, and at last left to perish in a Gaol, and therefore have I known many of these suppressed in the King's Bench; and, as I remember, a Rule of Court was made that none such should be licensed, which is a worthy Example for other Justices of Peace to observe, to prevent which Inconveniencies an Act of Parliament was made 22 & 23 Car. 2. d. whereby is provided, if any Under-Sheriff, Bailiff, Serjeant, or other Officers shall by Virtue or Colour of any Writ, Process or Warrant, have any Person in Custody, such Officer shall not carry, or convey or cause, &c. the said Persons to any Tavern, Alehouse, or Victualling, or Drinking-house, without his voluntary Consent, so as to charge him with any Sum or Sums of Money for any Thing there, but what he shall call for, nor take any Reward for Keeping such Person out of Gaol than the Party will freely give, nor take any more for each Nights Lodging or Expences than is reasonable, or shall be adjudged by the next Justice of Peace, or at the Quarter-Sessions to pay for any Thing else than what the Party calls for.

The Person.

As if the Party be in a Livery, or a Retainer to any Man, Bailiff of a Hundred or Liberty, Constable, &c. or be one that is not of good Fame, Conversation or Government; such Persons are not fit to be allowed to be Alehouse-keepers. See Fitz. N. B. 172. That no Victualler ought to sell Victual so long as he is in Office, &c. Statute 12 E. 2. cap. 6.

Again *dicitur*, that no Person, using any Trade, ought to be allowed to keep an Alehouse, for that were to take away the Means, and so the Life of another: *Tamen quare inde*, for that by the Common Law no Man is prohibited to use divers Trades. *Vide hic* Tit. Labourers.

T. Byworth suppressed from keeping an Alehouse, for that it appeared to the Court that he is a Steel-forgery, which is a good Trade, sufficient for him to live by, Ord. Sess. Pac. Mid. 26 Jul. 8 Car. which see to resolve the Quære aforesaid.

Also there are some Persons that by Law are disabled to keep an Alehouse (at least for a certain Time;) as,

1. The Alehouse-keeper convicted for any Offence against 1 Jac. 9. 7 Jac. 10. and 4 Jac. 5. or being convicted (according to the Statute *vicefimo* 21 Jac. 7. *primo* Jac. 7.) for suffering Townsmen, &c. (or any other Person) to continue Drinking in his House, contrary to the said Statute, (which see here before) such Alehouse-keeper is disabled to keep an Alehouse for three Years after such Conviction. 21 Jac. cap. 7.

2. The Alehouse-keeper that shall continue Drinking in another Alehouse or Inn in the same Town where he dwelleth, (the said Offence being seen by any Justice of Peace within his Limits, or being proved before him by two Witnesses upon Oath) every such Alehouse-keeper

keeper also is disabled for three Years after such Conviction to keep any Alehouse, as it seemeth upon comparing those two Statutes of 4 & 7 Jac. 21. cap. 7.

So the Alehouse-keeper that shall be drunken, and thereof lawfully be convicted, (by Indictment at the Assizes, Sessions of Peace, or in a Leet, or otherwise before the Justice of Peace) is disabled for three Years to keep an Alehouse.

4 Jac. 5. An Alehouse-keeper convicted and suppressed for any of the former
7 Jac. 10. Offences, if he shall be licensed or allowed again by two or more Ju-
21 Jac. 7. stices of Peace within three Years, such License is void, and he is to be punished as one Victualling without License. And so it was delivered by Sir Nic. Hide, at Cambridge Assizes, An. 3 Caroli Regis. And so it seemeth, if he were convicted, though he were not suppressed, if he be after licensed again within three Years after such Conviction, such License is void, &c.

5. The Alehouse-keeper that is discharged or put down by any two Justices of Peace, the one being of the *Quorum*, &c. is also disabled, so as he cannot be allowed again, except in open Sessions. See *hic antea*.

Also in Towns which are no Thorough-fare, the Justices shall do well to be sparing in allowing any Alehouse, except it be at the Suit of chief Inhabitants there, and to supply the necessary Wants of their Poor.

11 & 12 By the Statute 11 & 12 Will. 3. 'tis enacted, that Ale and Beer
W. 3. c. 15. shall be sold by the Ale-quart or Pint, according to the Standard in the * *Exchequer*, and in a Vessel stamped or marked with G. R. and a Crown; and if sold in a Vessel not stamped as aforesaid, or if an Inn-keeper or Alehouse-keeper refuses in bringing in the Reckoning to give the particular Number of Quarts and Pints, he shall not detain any Goods of the Guests if they refuse to pay the Reckning, but may bring his Action at Law.

* Or in the
City of
London.
Pots not
marked.

Besides, selling Beer or Ale in *Pots* not marked, according to the said Standard, forfeits not above 50 s. nor under 10 s. to be levied by Distress and Sale of the Goods of the Offender; one Moiety to the Use of the Poor where the Offence was committed, and the other to the Prosecutor; the Conviction is to be by the Oath of one Witness, before one or more Justices; and the Prosecution must be within thirty Days after the Offence.

And if any Action should be brought for putting the aforesaid Statute in Execution, it shall be laid in the proper County where the Fact was done, and *not elsewhere*; and if the Plaintiff shall be cast, the Defendant shall have *treble Costs*.

The *Collectors of the Excise* must provide a full Ale-Quart and Pint in every Market-Town within their respective Divisions, or they forfeit 5 l.

The Chief Officer of every Town shall cause the Pots to be marked as aforesaid, for which he may take one Farthing for every Vessel; and if he neglect or refuse to mark the Vessel, he forfeits 5 l. and treble Damages shall be had by the Party grieved and full Costs.

1 Vent. 13. Before this Statute was made a Man was indicted for Selling Ale in
S. C. black Pots *unsealed*, and the Indictment concluded *contra pacem*, without saying *contra formam Statuti*, for there was a Statute before now which directed the Sealing of Measures; and upon a Motion to quash the Indictment, because it did not conclude *contra formam Statuti*, it was adjudged that this Indictment was good at Common

Law, because Measures were by that Law, and the Statutes only direct the Manner of ascertaining them. *Sid. 409. The King versus Burgoine.*

Brandy. By the Statute 12 & 13 *Will. 3.* 'tis prohibited to sell *Brandy* or ^{12 & 13 Will. 3.} other distilled Liquors by Retail, to be drunk in Houses without a *License* in the same Manner as common Alehouse-keepers are licensed, and the Offender is made subject to the same Penalties and Forfeitures as those are who sell Ale or Beer without License.

Licenses. And by the Statute 6 *Georgii*, 'tis enacted, that all Mayors, ^{6 G. c. 22. sect. 54.} Town Clerks, and other Persons whom it may concern, shall make or cause to be made out *Ale Licenses* duly stamped before new *Recognizances* are taken, and this under the Penalty of 10*l.* for every Offence.

Now as to Selling Ale without a *License*, it hath been a Question whether an Indictment will lie for that Offence; those who argue for the Affirmative tell us, that where a Thing is prohibited by any Statute which is of a general Concern; and the Method of Recovering the Penalty is in *affirmative Words*, in such Case the general Method of Proceeding by Indictment is not taken away, for that must be by *negative Words*.

That in 1 *Saund. Rep. 248.* there is a Precedent of an Indictment ^{Sid. 409. S. C.} for selling Ale *without a License*, which is very true, but it was never objected in that Case, that the Indictment would not lie for that Offence, for it was quashed, because it concluded *in contemptum Domini Regis nunc legumq; suarum ac contra pacem, &c.* whereas it was no Offence at Common Law to keep an Alehouse without a License, for it was made so by a particular Statute, and therefore it should ^{* 5 & 6 Ed. 6.} have concluded *contra formam Statuti, &c.*

This Question was some Years afterwards formally debated in the ^{4 Mod. 144. Show. Rep. 398. S. C.} Case of the *King and Queen* against *Mariott*, where it was held, that Selling Ale without a *License* is an Offence created by a Statute; and since a particular Method of Prosecution is appointed by the Statute it self, (*by which the Justices of Peace have Power in their Sessions to enquire thereof, either by Presentment or Information, &c.*) that Method must be followed and no other; but an Indictment is another Method of Prosecuting, not so much as mentioned in the Statute, and therefore it would not lie; and two Judges declared, that they never yet heard of an *Indictment* against any Person for Keeping an Alehouse without *License*, which seems very strange, for certainly they must have heard of *Falkner's Case*, reported by the Chief Justice *Saunders*, as aforesaid; however they were of Opinion, that the Indictment would not lie, and the rather because by the Statute the Offender might be convicted by the View of the Chief Officer within his Limits, or by his own Confession, or by the Oath of two Witnesses; and then the Penalty is to be levied by Distress.

However in the principal Case, the Ch. Just. *Holt* being of Opinion, that the * Indictment being a summary Way of Proceeding, was more ^{* See 2 Salk. 45. S. P.} beneficial for the Subject, and therefore that Method ought to be pursued: Nothing was done upon this first Motion, but only to stay the Proceedings on the Indictment; but it being afterwards moved again, the Indictment was quashed for the Reason before-mentioned.

The Defendant was convicted upon the Statute 3 *Car.* for selling Ale *sine aliqua licentia & contra formam Statuti*; and upon a Motion to quash this Conviction it was objected, that the Selling without

License

License is punishable by former Statutes, particularly by the Statute 5 & 6 Ed. 6. by which 'tis enacted, That none should keep Alehouses without License granted either in Sessions, or by two Justices; and it doth not appear but that the Defendant might be licensed by two Justices according to that Statute. *Sed per Curiam*, it being alledged, That he sold *fine aliqua Licentia quacunq;* that is sufficient. *Trin. 9 Geo.*

The Defendant was found guilty upon an Indictment for selling Ale without paying the Excise, but upon a Motion in Arrest of Judgment it was quashed, because it did not set forth to whom or at what Time it was to be paid, nor what Quantity of Ale he sold, so that a Conviction upon such an incertain Indictment cannot be pleaded to any other for the same Offence; besides in Criminal Cases the utmost Certainty is required, therefore the Quantity of the Offence ought to be set forth in this Indictment. *Mich. 1722. B. R. The King versus Gibbs.*

12 Geo. By a late Statute, as to Selling Ale and Beer within the Bills of Mortality only, 'tis enacted, That after 24 June 1726, not less than one Pound, nor more than six Pounds, shall be paid yearly by every Victualler and Retailer of Beer and Ale, within the Bills of Mortality.

That Commissioners shall be appointed by the King or the Treasury, to manage the said Duty, who may substitute such Officers as they shall think necessary, which Commissioners, or the major Part of them, shall grant Permissions for retailing Beer and Ale.

That no Victualler, &c. within the Bills of Mortality, shall sell Beer or Ale without a Permission first obtained, under the Hands and Seals of such Commissioners, or the major Part of them; and in order to obtain such Permission, the Victuallers, &c. shall every Year, within twenty Days after the 24th of June, or some Person for them, make Application to the Commissioners, &c. and then compound with them for a Sum of Money, to be paid for one Year; one Moiety of which Composition-Money shall be paid down at the Signing of the Permission, and the other Moiety at the End of six Months next ensuing, which Permissions at the Expiration of one Year, shall be sent to the Commissioners to be cancell'd, and new Compositions made, and the like Permissions granted for the next Year.

Proviso, That an Inn-keeper, Victualler, &c. leaving off retailing Ale and Beer, and discharging all Composition-Money, and giving Notice thereof at the Office, &c. such Permission and Composition shall cease.

The Commissioners, &c. shall make Compositions, according to the best Intelligence they can get of the Trade of the Compounder, and shall demand no more than two Shillings and six Pence for each Permission, which shall be yearly accounted for and paid with the other Money, to be rais'd by Compositions.

That no Victualler, &c. shall send Beer or Ale out of their Houses to drink, in any Pot, Cup or Vessel, less than a Gallon, in Ale Measure; but Beer or Ale may be drunk at the Door of the House, or in any Out-house, Shed or Arbour, Garden or Yard, belonging to the House, in less Measures.

Victualler, &c. neglecting or refusing to take out a Permission, or to pay the Composition-Money as it shall become due, shall for every Neglect, &c. forfeit 20*l.* to be levied by the Laws of Excise.

That

That the Commissioners shall have the same Power as the Commissioners of Excise.

Proviso, this Statute shall not alter or diminish any Power of the Justices of the Peace, in licensing and regulating Victuallers.

Any Person sued for putting this Act in Execution may plead the general Issue, and give the Statute and the special Matter in Evidence, and if the Plaintiff be Nonsuit or the Defendant obtain Judgment on a Demurrer or a Verdict, he shall have treble Costs.

C H A P. VIII.

Affray.

§. 1.
What and
whence.

AFFRAY is in our Law a Skirmish or Fighting between two or more; and is derived of the French Word *Effrayer*, which signifieth to terrifie, and which the Law understandeth to be a common Wrong. And therefore I will shew you what every Man may do in such Cafes.

§. 2.
Every pri-
vate Man.

Every private Man being present before, or in and during the Time any Affray, ought to stay the Affrayors, and to part them, but may not hurt them if they resist him; neither may he imprison them, because he is but a private Man.

An Affray being in the Street, if any other shall come with Arms or Weapon to join with either Party, every Person present, or that seeth it, may stay them till the Affray be over.

Also every private Man (being present) may stay the Affrayors until their Heat be over, and then may deliver them to the Constables to imprison them till they find Surety for the Peace: But yet the Constable may not imprison the Parties, except the Affray was in his Presence. *Hic. cap. 1.*

If any Person be dangerously hurt in an Affray, every Person may Lamb. arrest the Offender, and carry him to the Gaol or to a Justice of Peace, ¹³⁴ (who is either to bail him until the next Gaol-Delivery, or to commit him until it be known whether the Party hurt will live or die.) *Br. Faux impris. 35. 44.*

§. 3.
The Con-
stable.

The Constable in such Cafes is armed with a more large Authority within his Jurisdiction; for he may and ought in the King's Name to command the Affrayors, or such as are about to make an Affray, ^{3H.7.c.1. Br. Coron. 225. 10H.7.20.} to depart (upon Pain of Imprisonment): And if the Constable (being Present at an Affray) doth not his best Endeavour to part them, it being presented by Enquest at the Sessions of the Peace, such Constable shall be fined for it. *See more chap. 1.*

But where the Affray is made out of the Presence or Sight of the Constable, and one telleth him of it, and wisheth him to go and see the Peace kept, and the Constable doth nothing, but neglecteth his Duty therein, he shall not be fined by the Justices at their Sessions, upon Presentment thereof by the great Enquest, *Cro. 146. Quare tamen & vide hic, cap. 1, & 5. the Commission, & 121 the Form of the Constables Oath.*

If the Affrayors will not depart, but shall draw Weapon, or give any Blow, the Constable may command Assistance of others for the Lamb. pacifying ^{135.}

pacifying the Affray, and may justifie the Hurting of them, if they make Resistance.

Lamb.
135.

The Constable may in the King's Name make Proclamation (if the Affray be great or dangerous) that the Affrayors shall keep the King's Peace and depart, &c.

Lamb.
159.

Also if the Affray be great and dangerous, then the Constables may command the Affrayors to Prison for a small Time, till their Heat be over; yea, they may imprison the Affrayors till they find Sureties for the Peace. And if any of the Parties have received any dangerous Hurt in the Affray, the Constable ought to arrest and carry

38 E. 3. 8.
& 11.
Br. Faux.
imp. 6.

the Offenders to the Gaol, (or to a Justice of Peace) that they may find Sureties to appear at the next Gaol-Delivery; and the Constable may justifie the Beating, &c. of such an Offender, if he will not obey the Arrest, but make Resistance, or flie.

Note, that it is no Affray unless there be some Weapons drawn, or some Stroke given, or offered to be given, or other Attempt to such Purpose; for if Men shall contend only in *hot Words*, this is no Affray: Neither may the Constable for *Words only* lay Hands upon them, unless they shall threaten to kill, beat, or hurt one another, and then he may arrest such Person, (to go before some Justice of Peace, to find Sureties for the Keeping the Peace;) and yet such threatnings is no Affray. But yet a Challenge by Word or Message to fight was held an Affray, and *Anno 16 Car. 2.* one *Collins* was fined 100*l.* and committed for a Month without Bail, being convicted on an Indictment for carrying a Challenge, knowing the Contents thereof. *Sid. 186.*

§. 4.

Hic. cap. 1.

If the Affray be in an House, and the Doors shut, the Constable may break into the House, to see the Peace kept, though none of the Parties have taken any Hurt.

§. 5.

If the Affrayors flie into another Man's House, the Constable (in *fresh Suit*) may break into the House, and apprehend the Affrayors, 7 E. 3. 19.

Pursuit.

Plo. 37.
Crompton 146.
b. & 172.
b.

If the Affrayors flie into another County, the Constable (or Justice of Peace) seeing this, may in *fresh Suit* pursue, or cause them to be pursued, and to be taken there; but they can meddle no farther but (as every private Person may do) to carry them before some Justice of Peace of the County where they are taken, to cause them to find Surety for the Peace.

Crompton 246.

But if the Affrayors flie into a *Franchise* within the same County, the Constable (or Justice of Peace) seeing this, may in *fresh Suit* pursue and take them out of such *Franchise*.

38 H. 3.
Br. F. imp.
6.

After the Affray the Constable, without a Warrant, cannot arrest the Affrayors, except some Person be in Peril of Death by some Hurt there received.

Every Justice of Peace may do that which every Constable or private Man may do by the Common Law herein.

§. 6.

9 Ed. 4. 3.
Crompton 195, 196.

Besides every Justice of Peace (within his Limits) may presently after the Affray commit the Offenders, until they have found Surety for the Peace, if the Affray were in his Presence. And if not in his Presence, yet upon Complaint, or upon his own Discretion he may after make his Warrant to take or commit such Offenders, until they have found Surety for the Peace. *Vide Tit. Peace & Surety for the Peace.*

The Fine
sics.

If

If an Affray be made in the Presence of a Justice of Peace, he may lay Hands upon and arrest the Offenders to find Sureties for the Peace, and may take away their Weapons, 21 H. 7. 22. b. Moor. Br. Faux. imp. 12. 82

And yet by the same Opinions, the Justice of Peace in Cases of an Affray, hath no farther Authority than every private Man hath: For though the Justices of Peace (sitting in their Sessions, or out of their Sessions) may command a Man to be attached, who shall make an Affray in their Presence, and may make a Record, and certify the same, which shall be a Conviction of the Offender; and the Justice of Peace may presently upon the Fact command or send such Offenders to the Gaol; yet the Justices cannot themselves attach or arrest any Man for an Affray, or other Thing done in their Presence, (no more than a Stranger or private Person may do;) but after the Affray they may make or grant out their Warrant to attach or arrest the Offenders, and may then commit them to the Gaol, except they shall find Sureties for the Peace.

Every Justice of Peace (in his own Discretion, and ex Officio) may bind all such to the Peace as in his Presence shall strike another, or shall threaten to hurt another, or shall contend only in hot Words. *Vide Tit. Sureties for the Peace.*

§. 7. If any Person be dangerously hurt in any Affray (or otherwise,) every Justice of Peace, within the Year and Day after such Hurt, may commit to the Gaol such Offender, there to remain until the Day and Year be expired, or that the said Offenders shall find Sureties to appear at the next General Gaol-Delivery, to answer to the Felony, if the Party hurt happen to die within a Year after the Hurt. *Vide Stat. 3 H. 7. c. 1. And by Gods Law, Exodus 21. 18, 19. If the Party happen to recover, the Offender shall pay to the Party hurt for losing his Time, and also for his healing.* P. Just. 173. 10 H. 7. 26. Crompt. 154.

Dangerous
Hurt.

But where the Hurt shall be dangerous, or wound mortal, although the Justice may bail the Offender, living the Party so hurt; yet it shall be better Discretion for him to commit the Offender to the Gaol, there to remain, until there shall appear some Hope of Recovery in the other: And so Sir Nicholas Hyde advised at Cam. Lent Assizes, Ann. 5 Car. Regis.

And by the Stat. de officio Coronatoris, 3 or 4 E. 1. upon Appeal of Wounds, and such like, especially if the Wounds be mortal, the Parties appealed shall be taken immediately, and kept till it be known perfectly whether the Party hurt shall recover or not; and if he die, the Offender shall be kept; and if he recover, he shall be attached by four or six Pledges, as the Wound is great or small: And if it be for a Maim, the Offender shall find no less than four Pledges; if it be for a small Wound or Maim, two Pledges shall suffice.

If an Affray or Assault shall be made upon a Justice of Peace or a Constable, they may not only defend themselves, but may also apprehend and commit the Offenders, until they have found Sureties for the Peace: The Justice of Peace may presently cause them to be arrested, and carried before another Justice, who may send them to the Gaol: And the Constable must commit them to the Stocks for the present, and after carry them before a Justice of Peace, or to the Gaol. *Vide hic postea.* H. 7. 6. Br. Faux. imp. 41.

Apprentice. See Labourers.

C H A P. IX.

Armour.

^{1 E. 3. c. 3.} ^{P. 1.} ^{7 R. 2. 13.} ^{20 R. 2. c. 1.} IF any Person shall ride or go armed offensively before the King's Justices, or any other the King's Officers or Ministers doing their Office, or in Fairs, Markets, or elsewhere, (by Night or by Day) in Affray of the King's People, (the Sheriff, and other the King's Officers) and every Justice of Peace (upon his own View, or upon Complaint thereof) may cause them to be arrested, and may bind all such to the Peace or Good Behaviour, (or, for want of Sureties may commit them to the Gaol): and the said Justice of Peace (as also every Constable) may seize and take away their Armour and other Weapons, and shall cause them to be apprised, and answered to the King as forfeited. And this the Justice of Peace may do by the first *Assig-navit* in the Commission. See hereof *antea*.

<sup>Lam. Of-
fic. of a
Const. 13.</sup> So of such as shall carry any Guns, Daggs, or Pistols that be charged, or that shall go apparelled with privy Coats or Doublets, the Justice may cause them to find Sureties for the Peace, and may take away such Weapons, &c. *Vide Tit. Surety for the Peace.*

^{2 E. 3. c. 3.} ^{Co. 5. 72.} ^{20 R. 2. 1.} And yet the King's Servants in his Presence, and Sheriffs, and their Officers, and other the King's Ministers, and such as be in their Company assisting them in executing the King's Process, or otherwise in executing of their Office, and all others in pursuing *Hue and Cry*, where any Felony or other Offences against the Peace be done, may lawfully bear Armour or Weapons.

Any Person may arm himself to resist or suppress those who disturb the Peace; but 'tis most discreet to be assistant to some ministerial Officer in this Matter; so resolved by all the Judges. *Anno 39 Eliz. Poph. 121.*

Army Debentures. See *Felony*, cap. 160.

Artificers.

^{5 Geo. c. 27.} By the Statute 5 Geo. one Justice may bind over to the Assizes or Sessions, any Artificer about to go beyond Sea; and those who endeavour to withdraw him thither.

And the Sessions may fine a Person contracting with, enticing or perswading any Artificer in Excise, Wool, Iron, or Steel, or any other Metal, Clock-maker, Watch-maker, or any other Artificer to go out of the Kingdom, 100*l.* for the first Offence, and three Months Imprisonment, and until such fine paid; the Prosecution in twelve Months.

Artificer convicted by one Witness of any Promise or Contract, or Preparation to go beyond Sea, must find Sureties not to depart out of the King's Dominions as the Court shall think fit, and for want of Sureties, to be committed until he find them.

Badger. See cap. 46.

Bakers. See *Weights*.

CHAP. X.

Barrator.

§. 1. **B**arrator cometh from the French Barrat, id est, astutia, in English, a Deceiver. In our Law a Barrator is a common Wrangler that setteth Men at odds, and is himself never quiet, but at Brail with one or other. Dr. Cow. & Minsh.

Every Justice of Peace (upon his Discretion) may bind to the Peace or good Behaviour, such as are common Barrators. 9 E. 4. 5.
Lamb. 79.

Also a common Barrator is he who is either a common Mover and Stirrer up (or Maintainer) of Suits in Law in any Court, or else of Quarrels or Parties in the Country. Co. 8. 36.
9 E. 4. 3. a. Co. L. 368.

§. 2. *In Courts.* As if in any Court of Record, County-Court, Hundred, or other inferior Courts, any Person by Fraud or Malice under Colour of Law, shall themselves maintain (or stir up others unto) Multiplicity of unjust and feigned Suits or Informations (upon penal Laws,) or shall maliciously purchase a special Supplicavit of the Peace, to Force the other Party to make Composition; all such are Barrators.

§. 3. *In the Country.* In the Country; and these are of three Sorts.

1. Disturbers of the Peace, viz. such as are either common Quarrellers or Fighters in their own Cause; or common Movers or Maintainers of Quarrels and Affrays between others.

2. Common Takers or Detainers (by Force or Subtilty) the Possessions of Houses, Lands or Goods, which have been in Question or Controversies.

3. Inventers and Sowers of false Reports, whereby Discord ariseth, or may arise between Neighbours. All these are Barrators. Co. 8. 36.

Yea, if one be Communis Seminor litium, he is a Barrator. West Indict. 75, 76.

Or if any Man of himself be Communis oppressor vicinorum, either by unjust or wrangling Suits, or other Oppressions or Deceits, he is a Barrator.

Or if one be Communis Pacis Perturbator, Calumniator, & Malefactor, he is a Barrator. Crom. 257.

§. 4. But all such Persons must be common Barrators, sc. not in one or two, but in many Causes. Co. 8. 37.

A Feme Covert cannot be indicted of common Barratry, and an Indictment against one for that Offence was quashd. T. 16 Jac. Roll's Rep. part 2. p. 39.

§. 5. *Punishment.* 1. A Man convicted of common Barratry shall be punished by Fine and Imprisonment, and may be bound to the good Behaviour, 34 E. 3. c. 1.

§. 6. *Indictment.* 2. An Indictment was Communis Barrektor, where it should have been Barrektorat, and quashd for that Fault, &c. 20 Jac. Alport's Case.

3. And although Barratry be an Offence made up of several Acts; yet a Place must be laid where the Offence was committed for the Necessity of Trial. Roll's Rep. 1 Part, p. 295. The King against Wells.

4. Barratry is of a mixt Nature, and the Justices of Peace cannot take an Indictment and Fine, and punish the Offender barely by Virtue of the Commission of the Peace, but in respect of the Clause therein to hear and determine Felonies, &c. And a Case was H. 17. Jac. Where a Man being indicted of Barratry at the Sessions, brought a Certiorari, and an Indictment was certified *capta coram*, &c. Justic. Dom. Regis ad pacem, but *neqnon ad diversa*, &c. was left out, and for that Cause the Certiorari was quashed. Roll's Rep. 2. Part p. 151. §. 7. Certiorari

5. Suing one in another's Name is a Species of Barratry, and therefore by 8 El. c. 2. He that causeth or procureth another to be arrested or attached in any Action at the Suit, or in the Name of another, where there is no such Person known, or without his Consent; upon Conviction by two Witnesses, shall be imprisoned six Months without Bail, and before Delivery shall pay ten Pounds with treble Costs and Damages to the Party, to be recovered by Action of Debt, &c. in any Court of Record. §. 8. Suing in another's Name.

It was formerly held that the Words *Communis Barreſſator* ought to be in every Indictment for a Barratry, and therefore to set forth that a Man is a Promoter of Suits, or *Communis vicinorum oppressor*; was not sufficient to support the Indictment.

But now 'tis ruled otherwise, for where the Defendant was indicted that he was *quotidianus perturbator pacis*, the Indictment was held good. Hill. 8 Will. Rex versus Gregory.

But 'tis essential to conclude the Indictment *contra pacem*. 2 Cro. 527. 2 Roll. Abr. 82.

It was likewise formerly thought not necessary to set out in what Place the Defendant was a Barrator, because he who is a Common Barrator is so in every Place; but 'tis of late ruled otherwise; for if the Fact is traversed, and no Place alledged, there cannot be any *Venire facias* to try it where the Fact was alledged to be; Anno Regni Domini nostri, leaving out the Word *Regis*; the Indictment was quashed. 1 Sid. 214. Godb. 557.

Upon an Indictment of Barratry, the Evidence was that T. S. was arrested at the Suit of another in an Action of 4000*l*. when in Truth he owed the Prosecutor nothing; and coming before the Chief Justice to give Bail, the Defendant appeared there and sollocated against the Prosecutor; *sed per curiam*, this is not Barratry but Maintenance.

But where a Man is arrested by another only to oppress him, and not to recover any Right, this is Barratry; and so in lending Money to stir up or promote Suits; and in this Case the Defendant did entertain the Prosecutor in his House, and brought several Actions in his Name; and it was held to be Barratry, there being nothing due. 3 Mod. 97.

Where the Defendant is indicted for Barratry, he must have a Note of the particular Fact, that he may know for what he is charged; otherwise the Prosecutor shall not proceed. 5 Mod. 18.

C H A P. XI.

Bastardy.

- §. 1. **B**astardus est qui nascitur ante matrimonium, Co. L. 243. *It cometh of the French Word Bastard, i. e. Nothus; and yet Bastardus est triplex; Manser, incestuose natus, Co. L. 244. Nothus, natus ex patre nobili, & matre ignobili, sc. Concubina; Spurius, natus ex matre nobili, & patre ignobili. A Bastard is Terræ filius, tho' his Mother be known.*

Cui pater est populus, pater est sibi nullus & Omnis.

Cui pater est populus, non habet ille patrem.

Much more of Foundlings, where neither Father nor Mother are known.

- §. 2. Every Justice of Peace (upon his Discretion) may bind to the Good Behaviour him that is charged or suspected to have begotten a Bastard-child, that he may be forth coming when the Child shall be born; otherwise there will be no putative Father, when the two Justices (after the Birth of the Child) shall come to take Order according to the Statute of 18 El. c. 3. The like may be done after the Birth of the Child, and before such Order taken. Lam. 122.
Crom.
196.

Also if the putative Father of any such Child, either before the Birth of the Child or after, shall, by any Perswasion, Procurement or other Practice, be conveyed or sent away, or shall run away, so as the Justice of Peace cannot come by him, or so as the Order of the Justices, by Means thereof, shall not be performed; every Justice of Peace, upon his Discretion, may bind to the Good Behaviour, and so over to the next general Gaol-delivery, (before the Judges of Assize) or to the next Quarter-Sessions, such as shall have any Hand in such Practice, &c. And such Offenders may by the Discretion of the Justices, (at their general Sessions) be ordered to contribute towards the Maintenance of the said Bastard-child. And so of Constables, which having received a Warrant from the Justice to apprehend the reputed Father, shall willingly or negligently suffer him to escape; or fine them. So such as by Practice, &c. shall cause the Mother of the Child to be conveyed or sent away, or to run away, whereby she leaveth her Child to the Charge of the Town, &c.

- §. 3. Two Justices of Peace (one being of the Quorum) in or next to the Limits where the Parish-Church is, in which Parish any Bastard-child (begotten and born out of lawful Matrimony) shall be born, upon Examination of the Cause and Circumstances, shall and may take Order by their Discretion, as well for the Relief of the Parish (in Part, or in all) and Keeping of the Child, (by charging the Mother or reputed Father with the Payment of Money weekly, or other Relief,) as also for the Punishment of the Mother and reputed Father. 21 Jac. c. 28. & 3 Caroli 5. 19 El. c. 3.
P. 2.

But such a Bastard-child must be one that is left to be kept at the Charge of the Parish, or one likely to be (or which may be) chargeable to the Parish. See the Stat. of 18 Eliz. and the Stat. 7 Jac. cap. 4.

- Where Sessions may make an Order. The Justices of the Peace in Sessions could not before the Statute of 3 Car. 1. c. 4. meddle with the Settlement of, or Provision for a Bastard-child, according to 18 Eliz. c. 3. until the two next Justices had made Cro. 13.
Ca. p. 337.
Slater's
Case.
18 E. 3.

made some Order therein, and after such Order made by the two next Justices, the Sessions might proceed therein to make a new Order; but
 3 Car. 4. now by 3 Car. 1. cap. 4. the Justices in Sessions have Power originally to make an Order therein, but this is seldom or never done.

H. 9. c. Cr. p. 248. & 225. Prid- gion's Case. And if the two next Justices of Peace make an Order according to 18 Eliz. c. 3. and the Party appeals from that Order to the next Sessions, and they alter, or discharge, or confirm that Order, any other Sessions cannot order any Thing contrary thereto; for the Order upon the Appeal is final, as in Appeal upon the Statute of Charitable Uses, and the Statute of 3 Car. 4. The giving Authority to Justices of Peace in Sessions, is to be understood where the next Justices have made no Order therein.

A Man is charged to be the reputed Father of a Bastard, by Order of two Justices, he appeals to the Sessions, and prays a Day to another Sessions to bring in his Proofs; besides giving Day, nothing is done; and if the Court might hear him, and give Relief at another Sessions, was the Doubt; and it was referred to the Justices of Assize. And Walter, Chief Baron, upon Consideration of the Statute of 18 Eliz. Resolved, That the next Sessions after, the two Justices Order must relieve him, or none else could. Gittens and Edwards's Case. Summer Assize in Sar. 5 Car. And so it was resolved B. R. Mich. 6 Car. 1. In Smith's Case against the Parish of Blackthorne in Com. Oxon.

The reputed Father, by the Law of God, was to give unto the Maid's Father fifty Shekels of Silver, and he also was to take her to Wife, Exod. 22. 16. and Deut. 22. 28, 29. wherewith agreeth the Canon 67. Apostol. Quam quis violaverit virginem, ducat in uxorem.

If the two Justices cannot agree upon their Order, what is then to be done, see *Hic antea*, c. 6. But by some Opinions the Words of this Statute being (in the Disjunctive) if the two Justices of the Peace in that Division or Limits cannot agree, then the two Justices of Peace next to that Division or Limits, (being in the same County, and one of them of the *Quorum*) have Power to take Order therein.

Also the Mother may be examined upon Oath concerning the reputed Father, and of the Time and other Circumstances; for that in this Case, the Matter and Trial thereof dependeth chiefly upon the Examination and Testimony of the Mother. *Vide hic cap. 66. and Lamb. 512.*

By the Stat. 7 Jac. it appeareth that the Justice of Peace shall now commit such leud Woman to the House of Correction, there to be punished, &c. And therefore *quere* if the Justices of Peace may not punish the Mother by corporal Punishment by Force of this Stat. of 18 Eliz. c. 3. and then send them to the House of Correction: For the Rule of Law is, *Nemo debet bis puniri pro uno delicto*; and the Divine saith, *Deus non agit bis in id ipsum*. Co. 4. 43, & 8. 118.

But such corporal Punishment or Commitment to the House of Correction, is not to be until after the Woman is delivered of her Child, neither are the Justices of Peace to meddle with the Woman until the Child be born, (and she strong again) lest the Woman being weak, the Child wherewith she goes happen to miscarry: For you shall find that about 31 Eliz. a Woman great with Child, and suspected for Incontinency, was commanded (by the Masters of Bridewell in London) to be whipped there, by Reason whereof she travelled, and was delivered of her Child before her Time, &c. And for this the said Masters of

of *Bridewell* were in the Star-Chamber fined to the *Queen* at a great Sum, and were farther ordered to pay a Sum of Money to the said Woman.

And as for the reputed Father, the two Justices shall do well, (as I conceive) if he be of Ability, to charge him more deeply; which if he refuse, then with Punishment according to the Statute of 18 Eliz. See for this Purpose an Order in such Case here, Chap. 174. And if the reputed Father be of small Ability, and shall not find Friends to yield some reasonable Allowance, then to undergo the more Punishment.

§. 5.
Not performing the Order.

After such Order by two such Justices subscribed under their Hands, 18 Eliz. 3. P. 1. if the said Mother or reputed Father, upon Notice thereof, shall not perform the said Order, then such Person so making Default shall be committed to the Gaol, there to remain without Bail or Mainprise; except such Parties shall put in sufficient Sureties to perform the same Order, or else personally to appear at the next General Sessions of the Peace in that County, and to abide such Order as the Justices of Peace, or more Part of them, then and there shall take in that Behalf, (if they shall take any) or in Default thereof, then to abide and perform the Order before made.

Nota que Enfant nee per 11. dies post ultimum tempus legitimum mulieribus constitutum, (sc. post 40 Semains apres mort son Pere) ne serra adjudge legitimum puerum, &c. Co. L. 123. 2 Esd. 4. 40, 41. Et issint semble de Enfant nee apres 40. Semains del temps que Feme charge Home daver carnal Conusance de luy, tiel Enfant ne serra adjudge ne repete destre le issue de tiel Home.

Every lewd Woman who shall have a Bastard which may be charge- 7 Jac. 4. able to the Parish, the Justices of Peace shall commit her unto the House of Correction, there to be punished daily, and set on Work for one Year, and to live of her own Labour; and if she shall offend again, then to be committed to the House of Correction, as aforesaid, and there to remain until she can put in good Sureties for her Good Behaviour not to offend so again. See c. 118.

Now such Commitment to the House of Correction ought to be by two Justices at the least, (by the Words of this Statute;) and by comparing these two Statutes (of 18 Eliz. and 7 Jac.) it seemeth fittest for the two next Justices authorized by 18 Eliz.

Also (by the Words of this Statute 7 Jac.) such a Woman shall not be sent to the House of Correction till after the Child be born, and that it be living; for it must be such a Child as may be chargeable to the Parish.

Also a Bastard-child is not to be sent with the Mother to the House of Correction, but rather that the Child should remain in the Town where it was born, (or settled with the Mother) and there to be relieved by the Work of the Mother, or by Relief from the reputed Father. See to this Purpose the Resolution of the Judges, Resol. 6. in the Title Rogues. And yet the common Opinion and Practice is otherwise, sc. to send the Child with the Mother, to the House of Correction; and this may also seem reasonable where the Child sucketh on the Mother. Vide plus cap. 6. fine, & cap. 40. Resol. 7. & Quare.

A Maid-servant gotten with Child, where she shall be settled. See Chap. 40. & Resol. 12; & 21.

Putative Fathers and lewd Mothers of Bastard-children leaving 14 Car. 2. cap. 12. their Children upon the Parish, the Church-wardens and Overseers for the Poor of the Parish where the Child was born, may seize and take

so much of the Goods and Chattels, and of the Rents and Profits of the Lands of such reputed Fathers or Mothers, as shall be ordered by two Justices of the Peace, for and towards discharge of the Parish, for providing for such Bastard; and by Order of the Sessions may sell the said Goods, or so much thereof as the Court shall think fit, and to receive so much also of the Rents and Profits of the Lands, for the said Purposes, as shall be ordered by the Sessions. The Punishment of such as shall kill their Bastard-children, see postea Tit. Felony by Stat.

And first concerning the Order of the two Justices.

1. It must directly adjudge who is the putative Father.
2. It must be made by two Justices *Quorum unus*.
3. They must reside next the Place where the Parish Church is, and which Parish is to be relieved.
4. It must be made concerning a Bastard-child, and so expressed, and the Child must be adjudged to be chargeable to the Parish; and it must appear how long the Father is to maintain it.
5. The Place of Birth must be set forth in the Order, because it may be born in a Parish where the two Justices who made the Order had no Jurisdiction, and that it was born in that Parish to which Relief is ordered.
6. It must be made pursuant to the Act for the Relief of the Parish, in Part or in all, and for Relief of the Child by a weekly Maintenance.

Rules concerning the Order.

Sid. 212. As to the second Rule above-mentioned, the Order is ill, if it doth not appear that one of the Justices is of the * *Quorum*; and so 'tis if the Money is ordered to be paid till the Child is fourteen Years old; for it ought to be so long as 'tis chargeable to the Parish; and so 'tis if the reputed Father should be ordered to give such Security to indemnify the Parish as the Overseers or Church-wardens shall think fit, because by such an Order the Justices delegate their Authority to another.

So it is if the Order is, that T. S. shall contribute half the Charge, for that he suffered a Soldier to get his Servant with Child.

It hath been a Question, whether the Justices could order the Payment of a Sum in gross by the putative Father. 1 Vent. 336. But as to that Matter 'tis now ruled, that they may.

1 Salk. 124. ff. Two Justices made an Order, that the putative Father should pay 9*l.* for the Maintenance of a Bastard, and adjudged good, for it may be to indemnify the Parish from the Charges sustained before the Father was taken; and by the Statute the Justices have Power to take order for Payment of Money weekly, for the Relief of the Parish, or other *Sustentation of the Child*.

1 Vent. 37. Upon a *Certiorari* to remove an Order made by two Justices for Keeping a Bastard-child, it was moved to quash it, for that it was *ad Sessionem pacis in Com. prad.* and did not say *pro Com.*; but this was over-ruled; 'tis true, the Objection had been proper to an Indictment, but in Orders there is not so much Strictness required; then it was objected, that it doth not appear that the Child was likely to become chargeable to the Parish.

But

But that was sufficiently set out in the Order, for it was for the Father to pay such Charges which the Parish had sustained, which shews that the Child was chargeable.

The like Objection was made to another Order, but adjudged, that ^{2 Salk.} it was self-evident that a Bastard-child is likely to be chargeable to the ⁴⁷⁵ Parish.

Orders
quashed.

An Order to keep a Bastard-child was quashed, for that it was that ^{Style 154.} T. S. should keep his reputed Bastard-child, because he had kept it before; but it did not set forth, that this Child was his Bastard. See *postea hic*.

An Order to pay Money *Weekly* to a Parish towards Keeping a Ba- ^{Style 368.} stard-child quashed, because it did not appear that the Child was *born in that Parish* to which the Money was to be paid.

Upon a *Certiorari* to remove an Order, &c. there were two Ob- ^{1 Vent. 210.} jections made to it; first, because it was, that the putative Father should allow 4s. to the *Midwife*, when it did not appear that she was procured by the Parish, or that they paid her: 2d, For that by the Order 7s. *per Week* was allowed for the Nursing and Clothes, and until it should be able to get its Living by Working, which was both excessive in the Sum and incertain in the Time; it should have been for so long Time as the Child is chargeable to the Parish, and for these Reasons the Order was quashed.

Another Order was quashed, because there was no *Adjudication*, that ^{2 Sid. 363.} the Person against whom the Complaint was made was the reputed Father of the Bastard.

Another Order quashed, for that it was to pay so much Money by ^{1 Salk. 468.} the Week till the Child was fourteen Years old, because the Power of the Justices extends no farther than to indemnify the Parish, and that ^{1 Mod. 20. S. P.} is only to compel the putative Father to pay so much as long as the Child shall be chargeable.

Another Order quashed, for that it was the reputed Father should ^{2 Sid. 363.} pay 2d. *per Week* for the Maintenance of the Child, because it was too little; 'tis true, the Justices of Peace have Power to adjudge who is the Father, yet if they are unreasonable in ordering what Sum he is to pay for the Maintenance of his Child, the Court may judge of that Matter.

Cases ad-
judged on
Appeals.

The Sessions must either affirm the Order of the two Justices, or ^{1 Bull. 341.} disallow it; and if they disallow it they may refer it back to the same Justices (if in the same County) to consider farther of the Proof, for the Matter is then before them as *Res integra*.

Resolved, That the Words of the Statute 18 Eliz. cap. 3. (*next* ^{1 Sid. 149.} *Quarter-Sessions*) must be intended, that the Order made by the two Justices must be confirmed or discharged at the next Quarter-Sessions of that *Part* of the County where it was made, and not at the next Sessions in the County, for that would be mischievous in many Counties where there are several Sessions in distinct Parts of the County.

An Order was made by two Justices, that T. S. should pay 8l. for ^{1 Sid. 325.} Relief of a Bastard-child of which he was the reputed Father, and afterwards so much every Week; but it appearing that he had no *Notice of this Order*, till the Time of Appeal limited by the Statute was past, (which is the next Sessions after the Order made) the Court made a Rule, that the next Sessions in *Middlesex* (where the Matter was) should hear it, and make an Order to discharge or charge the said T. S. and that such Order should be final.

^{1 Vent. 48.} Two Justices made an Order for T. S. to keep a Bastard-child, and upon an Appeal that Order was vacated, and it was referred back to the two Justices, who would make no other Order; but afterwards at the next Sessions, B. B. was adjudged the putative Father, and ordered to pay so much *per Week* to the Parish-Officers till the Child shall be twelve Years old, which Order being removed by *Certiorari*, the Sessions Order was quashed, for that they had no Authority to refer the Matter back to the two Justices. *Note*, This is contrary to the Case before-mentioned.

^{1 Salk. 121. S. P.} A Woman big with Child was removed from *Westbury* in *Glostershire* to *Corsham* in *Wiltshire*, where she was delivered of a Bastard-child, *Corsham* appealed to the next Sessions, and there that Order was reversed, but then the Child was sent by an Order of two Justices to the Parish of *Corsham*, because there it was born, when it should be sent to *Westbury*; but on an Appeal by *Corsham*, that Order was reversed, because the Birth of a Child under an illegal Order shall make no Settlement. *Trin. 3 Ann. in B. R.*

^{Cro. Car. 248.} By the Order of two Justices, *Pridgeon* was adjudged the putative Father of a Bastard-child, which Order was discharged upon an Appeal to the next Sessions; afterwards, at another Quarter-Sessions the Matter was re-examined, and then he was adjudged the putative Father according to the original Order of the two Justices; and for not giving Security to obey this last Sessions Order, he was committed; and being brought into Court by *Habeas Corpus*, it was adjudged, that he being discharged upon the *Appeal*, according to the Statute *18 Eliz.* the second Sessions had no Power to alter what was done by the first and next Sessions after the Order made.

^{* 18 Eliz. cap. 3. 3 Car. 1. cap. 4.} It hath been a Question, whether the Sessions can make an original Order in Cases of Bastardy; 'tis plain by the Statute * *18 Eliz.* they could not; but by the Statute * *3 Car. 1.* Power is given to the Justices of Peace *within their several Limits and Precincts, and in their several Sessions, to do and execute all Things concerning that Part of the Statute touching Bastards, that by Justices of Peace in the several Counties were by the said Statute limited to be done.*

But this was but a temporary Law, for it was to continue till the next Sessions of Parliament, which happened *Anno 16 Car. 1.* and not before; and that Parliament being dissolved without any Notice taken of the aforesaid Statute *3 Car. 1.* by Consequence that Statute must be expired.

^{17 Car. 1. cap. 4.} Afterwards by another Statute made the very next Year, (*viz.*) *Anno 17 Car. 1.* and by another Parliament it was enacted, that all Statutes which were continued by the Statute *3 Car. 1.* or were to continue to the End of the first Sessions of the next Parliament, should ever since that Session have the same Force and Effect as on the *last Day of that Session*, and *from thence till some farther Act of Parliament* be made about the Continuance or Discontinuance of the said Statutes.

Now the Statute *3 Car.* was to continue *till the End of the first Session of the next Parliament*, and that Session being ended without any Notice taken of that Statute, it must therefore be expired; but by Virtue of the Statute *17 Car. 1.* 'tis to have such Force and Effect as it had on the last Day of that Session, and *from thence till some farther Act of Parliament shall continue or discontinue the same*, which was never yet done by any subsequent Act, and by Consequence

quence that Clause in the Statute 3 *Car.* 1. by which the Justices in their Sessions have Power to execute all Matters concerning Bastard-children, as the two Justices might do by the Statute 18 *Eliz.* must now be in Force.

But there is no Case where it hath been adjudged to be in Force; and as often as this hath been made a Question, the Judges have been doubtful of it; so was the Chief Justice *Holt*, Anno 4 *Anna*, in the Case of the *Queen* versus *Weston*, and the Practise all over *England* is for the two Justices to make the Order, and not the Quarter-Sessions, for otherwise the Sessions Order would be final, and the Party deprived of the Benefit of an Appeal.

'Tis true, in *Slater's* Case it was adjudged, that the Quarter-Sessions have Power to make original Orders in Cases of Bastardy, but that is no Authority that they may do so now, because that Case was adjudged when the Stat. 3 *Car.* 1. was in Force and not expired; for it was adjudged in *Easter-Term*, * Anno 13 *Car.* 1. The Case was thus: * *Cro.* *Car.* 470.
§. The two next Justices making no Order where *A. B.* was charged with a Bastard, the Sessions, upon Proof that *T. S.* was the putative Father, made an Order to discharge *A. B.* and that *T. S.* should pay for the Keeping the Child; afterwards, at the Assizes, the Judges ordered that the two next Justices where the Child was born should consider the Matter, who thereupon made an Order that *A. B.* was the putative Father, and that he should pay 18 *l.* to the Overseers, &c. and 14 *s.* weekly, which he refused; and thereupon the two Justices committed him; and this being removed into *B. R.* by *Certiorari*, it was resolved, that before the Statute 3 *Car.* 1. the Justices in Sessions had no Authority to meddle in Cases of Bastardy, till the two next Justices had made an Order according to the Statute 18 *Eliz.* but that by the Statute 3 *Car.* the Justices in Sessions had Power to make original Orders in Cases of Bastardy, and therefore the Order made in this Case by the Sessions was good, and the Order made by the two Justices void, and could not alter the Sessions Order.

But before the Resolution in the last Case, and likewise before the Statute 3 *Car.* 1. was expired, there was a contrary Resolution in *Easter-Term*, Anno 8 *Car.* 1. in the Case of * *Bowber* versus *Painter*, * 2 *Bull.* (viz.) that Justices of Peace, nor yet Justices of Assize have Power to 343.
meddle in Cases of Bastard-Children, upon the Statute 18 *Eliz.* but upon Appeal.

The same Point was adjudged in *Waikyns* and *Edwards's* Case; 'tis 1 *Vent.* 175.
true, it was not the Point in Question; however, the Judges declared, that the Sessions could not make an original Order for Keeping a Bastard-child, but upon an Appeal, and certainly they could never be of that Opinion if it had been clear that the Statute 3 *Car.* was then in Force.

Of the Jus-
tices
Power to
commit in
Cases of
Bastardy.

Appeal to the Sessions from an Order of two Justices, by which *T. S.* was adjudged to be the putative Father of a Bastard, and ordered to pay so much Weekly to the Overseers of the Poor, &c. and the Sessions confirmed the Order, and committed *T. S.* for Non-payment of the Money; it was objected, that the Sessions had no Power to commit, but the Recognizance ought to be put in Suit; but it was held, that they might commit by Virtue of the Statute 4 *Car.* 1. but not by the Statute 18 *Eliz.* if so, then that Statute 4 *Car.* is still in 122.
Force.

But

But there hath been a contrary Resolution in this very Point; it was an Order made by two Justices for the putative Father to pay so much *per Week* for ten Years, &c. which Order was confirmed upon an Appeal to the Sessions, and they committed him for not giving Security; it was objected, that the Sessions had not Power to commit, but that the two Justices before they allowed the Appeal, should have taken a Recognizance (as is usual) to appear at the next Sessions, and to abide such Order as the Justices should make, and for disobeying such Order, then the Parish must proceed upon the Recognizance, but the Sessions cannot commit. 2 Ann. *The Queen v. Chaffry*. 12 Will. 3. *The King v. James*. See 2 Bulst. 341.

Salk. 123. The Husband who was settled in the Parish of St. Margaret Westminster, was divorced a *Mensa & thoro causa adulterii*, and afterwards she and the Adulterer went into the Parish of St. George, Southwark, where she had three Children by him, all christened there, and registred by his Name; but an Order was made by two Justices to remove them to the Parish of St. Margaret, where the Husband was settled, for that the Justices were of Opinion the Children were born in lawful Wedlock notwithstanding the Divorce, which Order was confirmed upon an Appeal, the whole Matter being specially set forth therein; and both Orders being removed by *Certiorari*, it was insisted for the Parish of St. Margaret, that these were Bastards, and ought to be settled where born; but on the other Side it was said, that these Children were legitimate, for tho' there was a Divorce a *mensa & thoro*, the Marriage still continues, and the Orders do not set forth, that the Husband had no Access to the Wife after the Divorce, and therefore where he is *infra quatuor maria*, an Access shall be presumed; but the Court held that these Children were Bastards, and that * Access shall not be presumed; but it must be proved on the other Side to make them legitimate; but one begotten and born after a voluntary Separation shall not be a Bastard. * Because the Court will intend a due Obedience to the Sentence of Divorce, unless the contrary appears.

5 Mod. 419. Upon a Special Order of Sessions, the Question was, if the Husband was beyond Sea during the whole Time the Wife went with Child, whether this Child will be a Bastard by the Statute 12 Eliz. cap. 13, and adjudged that it will; but the Order was quashed, because it did not appear that the Husband was absent all that Time, it being in the Disjunctive, that he was not here at the Begetting or Birth of the Child, for if he was here at either of those Times, 'tis sufficient.

By the Statute 14 Car. 2. the Parish-Officers where a Bastard is born, may * seise so much of the Goods, and receive so much of the Rents of the Lands of the putative Father and Mother as shall be ordered by two Justices, which Order must be confirmed at the Sessions, and this is to discharge the Parish. * Seizure of the putative Father's Goods. They may seise.

but cannot sell by Virtue of the Order of the two Justices, but the Sessions must make an Order to sell the Goods.

2 Bulst. 350. A Bastard was born in the Parish of C. ten Years past, and T. S. the putative Father took the Child from the Mother, and placed it out at Nurse, and then married and cohabited with his Wife in the Parish of B. and thither he brought the Child, where he maintained it for several Years, and died, leaving several Children by his said Wife; adjudged, that this Bastard-child is to be sent to his Mother, if she be of Ability, but if not, then 'tis to be sent to the Parish of B. because there it was settled with the putative Father. Where the Child is to be settled.

An Order to remove *A. B.* late of the Parish of *C.* single Woman, ^{5 Mod. 204.} and *W. B.* her Son, from the Parish of *L.* to the Parish of *M.* for ^{1 Salk. 121, 532. S. P.} that by Fraud of the Parish of *L.* she was delivered of the said *W. B.* her Bastard-Son in the said Parish of *M.* and it was insisted, that where a Bastard is born, there 'tis settled, unless some other Settlement appears; now this Bastard was born in the Parish of *M.* therefore it ought to be settled there; and it did not appear by the Order, that the Mother was settled in *L.* 'tis true, 'tis said that *A. B.* late of *L.* single Woman, but that is only a Description of her Person and an Allegation of the Place, and it doth not prove that she was legally settled there.

An Order was made by two Justices many Years since, that the Parish of *B.* where a Bastard-child was born, should maintain the said Child, which Order being removed by *Certiorari*; it was adjudged, that an Order made upon the Overseers of the Poor of a Parish for raising Money towards the Maintenance of a Bastard or poor Person, doth not determine the Settlement to be in that Parish, because the Right of Settlement is not contested, but presumed.

By an Order of two Justices, *Glegg* was adjudged the putative Father of three Bastard-Children, and he was ordered to pay 10*l.* to the Overseers of the Poor, &c. for the Charges that the Parish had sustained by Reason of the said Children, and 2*s.* 6*d.* per Week for so long Time as they or either of them should be chargeable to the Parish, which Order was confirmed on an Appeal; and both the Orders being removed into *B. R.* by *Certiorari*, it was objected against the original Order.

(1.) That it did not appear that *Glegg* was duly summoned to appear before the Justices; 'tis true, the Order set forth that he had Notice to appear, but not for what Cause.

(2.) By the Order the Father was charged to pay 10*l.* whereas the Justices have not Power to charge him with a Sum in gross.

(3.) He was charged by one Order to be the Father of three Bastard-Children, when there should be as many Orders as there were Bastards.

The Court was of Opinion, that if the Defendant was not duly summoned to appear, and for what Cause, the Order ought to be quashed; but as to the second Objection, a putative Father may be charged with a Sum in gross, tho' this is seemingly against the Statute 18 *Eliz. cap. 3.* by which the two Justices have Power to charge the Mother or reputed Father with the Payment of Money Weekly; but by the same Statute they have likewise Power to take Order for the Relief of the Parish, which must be intended Relief against that Charge which it hath sustained, as well as against the Charge which it may sustain.

As to the third Objection, the Court gave no Judgment, but that the Parish should have Time to shew Cause whether the Defendant was duly summoned. *Mich. 1721. B. R. The King versus Glegg.*

C H A P. XII.

Bailment. See Chap. 166.

Lamb. 15. **B**Y the Common Law, the Sheriff and every Constable (being Conservators of the Peace) might have bailed one suspected of Felony: But this Authority is taken from them, and given to the Justices of Peace, by the Statutes following.

First, By the Statute 1 R. 3. cap. 3. every Justice of Peace had Authority (by Discretion) to let to Bail Persons imprisoned for Suspicion of Felony, &c.

But because after the Making that Statute, divers not being bailable were notwithstanding let to Bail, and so many Felons escaped; therefore this Statute was repealed by the Statute of 3 H. 7. and there-
 3 H. 7. c. 3. by any two Justices of Peace (the one being of the Quorum (were en-
 Fitz. N. B. abled to let any Prisoners (mainpernable by the Law) to Bail, to the
 251. F. next General Sessions of the Peace or Gaol-delivery, as the Case should require. After, for that one Justice of Peace, in the Name of himself and of one other of his Fellow-Justices, (not making the other Justice privy unto the Cause, whereof the Prisoner should be bailed) did oftentimes by sinister Means set at large great Offenders, such as were not bailable, and yet, to hide their Affection therein, did signify the Cause of their Apprehension to be but only for Suspicion of Felony, whereby the said Offenders have escaped unpunished; for Reformation thereof, by the Statute 1 & 2 P. & M. it was enacted, That if it be
 1 & 2 P. & M. cap. 3. for Manslaughter, or Felony, or Suspicion of Manslaughter or Felony, (being bailable by Law,) then the same Justices must be present together at the Time of the said Bailment; and that they must certify (in Writing subscribed with their own Hands) the said Bailment at the next General Gaol-delivery, to be holden within the County where the Person shall be arrested or suspected, upon Pain to be fined by the Justices of Gaol-delivery.

Now by the Preamble of both the last recited Statutes, the Mischief One seemeth to be the Escape of Felons; and therefore if it be not in Case of Felony, any one Justice of Peace alone may bail a Prisoner; (see the Titles, *Affray*, *Dying*, and *Surety for the Peace*) except where some particular Statute shall otherwise prescribe, as in *titulo Counterfeitors*. See more of *Bailment hic postea*, cap. 166.

23 H. 6. 10. *Sheriffs, Under-Sheriffs, Coroners, Stewards, Bailiffs, Keepers of Prisons, and other Officers, shall let out of Prison all Persons by them arrested, or being in their Custody by Force of any Writ, Bill or Warrant in any Action personal, or by Cause of any Indictment of Trespasse upon reasonable Sureties of sufficient Persons within that County to keep their Day, as such Writs, Bills or Warrants require; except Persons arrested by Cap. Utlagat. or Excommunication or Surety of the Peace, or committed to Ward by special Command of any Justices or Vagabonds, or shall pay the Party treble Damages and forfeit forty Pounds, a Moiety to the King, the other to the Prosecutor, and the Justices of the Peace have Power to hear and determine.*

Resolved by all the Judges, and agreed to be put in Execution in all Circuits, that where a Felon is examined by a Justice, and it appears he is not bailable by Law, and that the Justice commits him on Suspicion

picion of Felony, not mentioning any other Cause, and afterwards he is bailed by two Justices, for that no Cause was set forth in the Warrant of Commitment, why he should not be bailed; those Justices ought to be fined by the Statute 1 & 2 Ph. & Mar. cap. 13. because they offend if they bail him who by the Statute of Westm. 1. cap. 15. is not bailable by Law. *Poph. 96.*

A Man was committed for Forging an Endorsement on a Bank-Bill, and he was bailed, for this is only a Misdemeanor, but Forging the Bill it self is Felony. *1 Salk. 104.*

Bakers. See Brewers.

C H A P. XIII.

Bankrupt.

§. 1.
Punish-
ment of
Falsehood.

IF any Bankrupt shall upon his Examination be found to have fraudulently conveyed away Goods, Chattels, Lands, Tenements, Offices, Fees, or any of his Estate to the Value of twenty Pounds or more, to the End to hinder the Execution of the Statute, or to delay his Creditors of the same, and shall not upon his Examination discover, and if it be in his Power, deliver a Particular thereof to the Commissioners, or that cannot make appear to them some casual Loss, whereby he is disabled to pay what he owed, may be indicted for the same at the Sessions of the County, or Place where he becomes a Bankrupt, and being thereof convicted, be set in the Pillory for two Hours, and have one of his Ears nailed to the Pillory and cut off. 21 Jac. 19.

By the Statute 5 Geo. cap. 24. One Justice of the Peace may issue out his Warrant for the Apprehending any Person certified to be a Bankrupt, and commit him to the common Gaol of the County where he shall be taken.

C H A P. XIV.

Blasphemy.

INformation may be taken of blasphemous Words within four Days after they are spoken, and the Prosecution must be within three Months after the Information. 9 & 10 W. 3. cap. 32.

C H A P.

C H A P. XV.

Brewers and Bakers. See Brewers in Excise.

A Baker that observeth not the Assize of Bread, shall be put into the Pillory, and shall not be redeemed thence for Silver or Gold. §. 1.
31 H. 1. cap. 7.

A Brewer that breaks the Assize of Ale or Beer, shall for the first and second Offence be amerced, and for the third Offence put in the Pillory without Redemption. 31 H. 1. c. 7. §. 2.

There is a good Law made 23 H. 8. c. 4. that no Brewer shall be a Cooper, and for setting the Prices: But the Justices of Peace have nothing to do therein, as is resolved Cro. 4. Car. 1. libro meo, p. 79. as suing for the Penalties; but Justices of Peace out of Corporations, and in them the Mayor and second Officers may assess the Price of Ale and Beer.

See the Penalty of a Brewer selling Beer to an unlicensed Alehouse, Tit. Alehouse, & 1 Jac. 18.

A Brewer that brews Beer with corrupt Hops, or mix'd with Powder, Dust, or other Soil, forfeits the Value of the Hops: 1 Jac. 18.

§ Ann. c. 8. By the Stat. 8 Anna, one Justice of Peace may issue out his Warrant to levy * 40 s. by Distress and Sale of the Goods of any Baker or other who bakes or exposeth to Sale any Bread, not observing the Assize, or which is under Weight, or not duly marked, or who breaks such Regulations and Orders as from Time to Time shall be made by the Justices. * This Clause is repealed by Stat. 1 Geo. cap. 25. See his postea.

The Prosecution must be within three Days after the Offence committed, and the Conviction may be by Confession of the Party, or the Oath of one Witness, and must be certified to the Quarter-Sessions, to which there lies an Appeal from such Conviction, and what the Sessions order shall be final.

He who bakes or sells any Bread, and puts any Mixture into it of any Grain than what shall be appointed by the Assize, shall forfeit 20 s. to be recovered as aforesaid; and any Magistrate neglecting his Duty in the Execution of this Act, forfeits 20 s. to be recovered in the Courts at Westminster.

Any Justice of the Peace may in the Day-time enter the House, Shop or Stall, or Outhouse of any Baker, and weigh and try the Bread there; and if 'tis defective either in Goodness, Weight, or Baking, or not duly marked, he may seize it and give it to the Poor; and every Baker or other resisting or opposing such Search, forfeits 40 s. to be recovered by Distress and Sale of Goods, &c. to the Informer.

Persons prosecuted for acting in Pursuance of this Statute, may plead the General Issue, and give the special Matter in Evidence; and if the Plaintiff is nonsuit or cast in the Action, he shall pay double Costs.

1 Geo.
c. 25.

By the Statute 1 Geo. 'tis enacted, that the Clause in the Statute 8 Anna, which gave the Penalty of 40 s. for Bread not being Weight or not marked (and for no other Thing) shall be repealed; and that if any Baker make Bread wanting an Ounce Weight, or more, he forfeits 5 s. for every Ounce, and if less than an Ounce is wanting, then he forfeits 2 s. 6 d. being weighed before a Magistrate, or any Person appointed

appointed by him, within twenty-four Hours, if within the Bills of Mortality, and within three Days in any other Part of *England*; the said Forfeitures to the Informer, and to be recovered by Distress and Sale, &c.

Every Baker may make Peck, Half-peck, Quartern and Half-quartern Loaves, so as the same be made and sold both as to Weight and Measure in Proportion to the Assise-Table in the Act 8 *Anna*.

And when the Bread shall be altered according to the Powers in that Act, the Price of Grain, Meal and Flower in the next Markets adjacent, where such Assise shall be set, shall be certified upon Oath before the Chief Magistrate or Justices respectively, by the Clerks of the Markets, or such other Persons as the Magistrate shall appoint; and the Assise within the Bills of Mortality (*Westminster, Southwark*, and within the Weekly Bills in *Surrey* excepted) shall be set by the Lord Mayor and Aldermen of *London*, &c.

The Statute 8 *Anna*, with what Alterations are made by this Act, 5 Geo. were by the Statute 5 Geo. cap. 25. continued for five Years, and to the End of the next Sessions of Parliament after those five Years.

CHAP. XVI. Vide XIII.

Bridges.

§ 1. **W**Here a decayed Bridge is, and that it cannot be proved who ^{22 H. 8. 5.} nor what Lands be chargeable to the Repairing thereof, four ^{P. 2, 3, 4.}

Justices of Peace (whereof one to be of the *Quorum*) within the Shire or Riding wherein such decayed Bridge is, (out of Cities and Towns Corporate; and if it be within a City or Town Corporate, then four such Justices of Peace there) may within the Limits of their several Commissions call before them the Constables, or two of the most honest Inhabitants of every Town and Parish within the Shire, Riding, City or Town Corporate, wherein such Bridge or any Person thereof shall happen to be; and the said Justices (upon the Appearance of such Constables or other Inhabitants, and with their Assent) may tax every Inhabitant in any such City, Town, or Parish (within their Limits) to such reasonable Sum of Money as by their Discretions they shall think convenient, as well for the Repairing of such Bridge, as also for the Making and Repairing of any Highways lying next adjoining to the End of any such Bridge within this Realm, distant from either of the Ends of the Bridge by the Space of Three hundred Foot.

Taxes. After such Taxation made, the said Justices of Peace shall cause the P. 2. Names and Surnames of every particular Person, so by them taxed, to be written in a Roll indented.

Collectors. Also the said Justices shall make two Collectors of every Hundred, P. 3. for the Collecting of all such Sums of Money, by the said Justices set and taxed; which Collectors receiving the one Part of the said Roll indented under the Seals of the said Justices, shall have Power thereby to collect all the particular Sums of Money therein contained, and to distrain such as shall refuse to pay the same, and to sell such Distress, delivering to the Owner the *Overplus* of the Money, if there be any.

Also the said Justices shall appoint two Surveyors, which shall see P. 4. such decayed Bridges and Ways repaired and amended from Time to Time,

Time, as often as need shall require, to whose Hand the said Collectors shall pay the said Sums of Money by them received.

- P. 4. The said Collectors and Surveyors, and their Executors and Administrators, and every of them, shall from Time to Time make a true Account to the said Justices of Peace of the Receipts, Payments and Expences of the said Sums of Money; and if any of them refuse so to do, then the said Justices of Peace from Time to Time (by their Discretions) may make out Process against the said Collectors and Surveyors, their Executors and Administrators, by Attachments, Precept, or Warrant, under their Seals, returnable at their General Sessions of the Peace.

Ibid. Also the said four Justices of Peace may allow such reasonable Cost and Chargers to the said Surveyors and Collectors, as by their Discretions they shall think convenient.

- P. 1. If any such Bridge shall be wholly in a City or other Corporate Town, the Inhabitants of the Shire or Riding shall not be charged therewith, but such Bridge shall be made and repaired by the Inhabitants of such City or Town Corporate. §. 2.
Who shall be charged.

- P. 1. If any such Bridge be without a City or Town Corporate, the same shall be made and repaired by the Inhabitants of the Shire or Riding within which the same Bridge shall be.

Ibid. If Part of any such Bridge be in one Shire, Riding, City or Corporate Town, and Part in another, then every of them shall be charged to make and repair such Parts as shall lie and be within their Limits, &c.

Magna Charta. 15. P. ti. Wears 1. F. Grants 94. 41 E. 3. 31. 21 E. 4. 46. But otherwise no Village or Free-men shall be compelled to make any Bridge, but such as of old Time and by Right they had wont to make, and that they and their Ancestors have used Time out of Mind to make the same, or that they hold certain Lands to make the same: For though a Man of his own accord hath made or amended a Bridge, yet shall he not be thereto constrained at another Time; and yet if a Man and his Ancestors, or a Corporation, &c. have Time out of Mind used to do such Things, although they did it of their own free Mind and accord, and not of Right, nor have any Land by Reason whereof they may be tied, yet such Continuance shall conclude them and their Heirs or Successors. And so of Highways, 21 Ed. 4. 46.

Also there is a Writ in the Register directed to the Sheriff, willing him to cause such to whom it belongeth, to repair a Bridge, or repair Highways, &c. Reg. Orig. fol. 153, 154.

Where a Man and his Ancestors or Predecessors have used Time out of Mind to repair a Bridge, the King cannot acquit or discharge them thereof. Fitz. Gr. 94.

Where it is presented that J. S. *ratione tenure sue* hath used to repair such a Bridge, this implieth a Prescription. 21 E. 4. 38. Crompt. 176.

But a Presentment that J. S. and his Ancestors have used to repair such a Bridge, this is no good Prescription to charge the Heir (by the Act of his Ancestor) without any Profit to be taken therefore. 27 Aff. 8. Crompt. 187. See the next Case but one. §. 3.
Prescription.

Otherwise it is of a Corporation Spiritual or Temporal: They by Reason of Usage Time out of Mind, &c. may be charged at this Day to repair a Bridge, although they have no Land by Reason whereof to be charged, for that such a Body never dieth. *Ibid.*

Also where a Man hath once repaired a Bridge, and that afterwards the same was not repaired within the Memory of Man, by some Opinions, he or they which have his Estate in Land, shall be bound to repair the Bridge; for that it shall be supposed to have been done at the first, by Reason or Cause of his Tenancy, except some other Particular Cause of the Doing thereof shall be proved: But where the Cause shall appear, there *cessante causa, cessabit effectus*.

He that hath his Land adjoining to such a Bridge, is not chargeable ^{B. Bridges.} to make or repair the Bridge, except where they have made it by Prescription. ^{8 H. 7. fol. 5. b.}

§. 4. By common Right, Bridges shall be amended by the whole County, for 'tis for their common good and Ease; and yet if any have Fishings or other Profit in that River, they in Reason and Law are chargeable; and therefore the Justices of Peace may tax such proportionably to their Profit. ^{Cro. 186. b. & 137. b. 37 Aff. pl. 10. per Green.}

Where Men are charged by their Tenure or Lands, every owner or occupier of such Lands are to be charged proportionably to their said Lands. *Vide Tit. Sewers, and Fitz. 235. b.*

Such as are chargeable to repair a Bridge, may enter upon any other Man's Lands or Soil adjoining, and may lay their Stone, Lime, Timber, or other Things necessary for the Repairing and Amending thereof, and the Owner of the Lands shall have no Action therefore; for it is for the common Profit, *Ec. 43 Aff. 37. Fitz. Affize 353.* ^{Co. 11. 32.}

Where one is chargeable to repair a Bridge, he must also maintain the Way at each End thereof, (though the Soil be to another;) and if the Ends be broken by the Water-Course, he must follow the Water-Course, and repair the Way, *Ec. Crompt. 186. b.*

If a Man maketh a Bridge for Easement to his Mill, and that decayeth, the Party nor any other shall be charged to repair this; for it is no common Passage. *Fitz. Bar. 276.* ^{Co. 187.}

Defects of Repair of Bridges shall be presented in the County only where they lie, and no Presentment nor Information shall be removed before Traverse and Judgment thereupon. *22 Car. 2.*

§. 6. *Use.* Where Lands are given to the Maintenance of Bridges, the Feoffees and Trustees shall let the same at the most improved Rent without Fine; if such Trustees make Default, the Justices of Peace in their open Sessions may inquire of the Value thereof, and may order the Improvement and Employment thereof. *22 Car. 2.*

By the Stat. 1 Anno cap. 18. all Clauses in the Act 22 H. 8. are confirmed, which are not altered by that Act. ^{11. Anno c.}

And for the more easy taxing and better applying the Money to be raised for repairing decayed Bridges, it is enacted, that the Quarter-Sessions upon Presentment that any Bridge is out of Repair, shall make an Assessment upon every Parish or Place within their Limits, in such Proportions as they have been formerly assessed; and the Money shall be levied by the respective Constables of each Parish, or by other Persons as the Justices shall direct; and shall be paid by the Constables, &c. to the High Constable within six Days after 'tis received, and the High Constable within ten Days after shall pay the same to the Treasurer appointed by the Sessions to receive it; which Money shall be applied and accounted for as the Sessions shall direct, which Assessment shall be levied by Distress and Sale of Goods, if not paid within ten Days after Demand.

Every

Every High Constable, Churchwarden, Overseer, Petty Constable, or other Person, neglecting to assess, collect, or to pay the Money as before directed, shall forfeit 40 s. and the Treasurer paying Money without Order of the Sessions forfeits 5 l. for every Offence.

All Fines and Penalties incurred for not repairing Bridges, shall be paid to the Treasurer, and applied towards the Repairs of the Bridges, and shall not be returned into the Exchequer.

Matter concerning Repairs of Bridges, shall be determined only in those Counties where they lie, and no Presentment or Indictment shall be removed by *Certiorari* out of the County into any other Court.

The Sessions may allow any Person concerned in the Execution of this Act, any Sum not exceeding 3 d. per Pound.

Those who are sued for acting in Pursuance of this Statute, or of that 22 H. 8. c. 5. may plead the general Issue, and give the said Acts in Evidence, and if the Plaintiff is Nonsuit, &c. he shall pay double Costs; and this Act shall not discharge particular Persons Estates and Places from repairing such Bridges as heretofore they did repair.

And where an Indictment or Information is brought against any particular Person, Body Corporate or Politick, for not Repairing, &c. the Inhabitants of the Town, Corporation, County, Riding, or Division, where the Bridges lie, shall be admitted to give Evidence at the Trial, &c.

And lastly by this new Act the Statute 23 Eliz. for rebuilding *Cardriff Bridge* is repealed, and that for ever hereafter that Bridge shall be reputed a common Bridge; and repaired by the County of *Glamorgan*.

And that the Wardens and Assistants of *Rocheſter Bridge*, shall be chosen every Year on the *Friday*, in the Week next after *Easter Week*.

Before the Making this Statute, the Courſe was to charge every Hundred with a Summons in Groſs, and to ſend it to the High Conſtable of each Hundred, who ſend their Warrants to the Petty Conſtables to collect the Money, by Virtue of which Warrant they aſſeſs the Inhabitants in particular Sums, and then they collect it and pay it to the High Conſtables, who bring it to the Sessions.

But becauſe this Way of Taxing was illegal, and becauſe in many Places more Money was levied than was really neceſſary for Repairing, and alſo becauſe the Money when levied was miſemployed, therefore by this Statute 1 *Anna* theſe Matters were remedied, and the Manner of levying it is thus.

ſſ. The Headborough muſt demand it of the Party, and if not paid within ten Days after Demand, he may levy it by Diſtreſs and Sale of Goods, rendring the Overplus, the neceſſary Charges of diſtraiſing being deducted.

And if any Officer neglect to aſſeſs, collect, or pay the Money, he forfeits 40 s. for every Offence.

CHAP. XVII.

Buggery.

THIS is an Offence committed by one Man with another againſt the Order of Nature, or by a Man with a Beaſt; 'tis made Fe-

lony

lony without Benefit of Clergy; by the Stat. 25 H. 8. cap. 6. See the Form of the Indictment in Nelson's Justice. Tit. Buggery.

Burglary. See *Felony*, cap. 40. And *Burglary*, cap. 151.

CHAP. XVIII.

Burials.

5. 1. **N**O Person shall be buried in any Shirt, Shift, or Sheet, made of, or mingled with Flax, Hemp, Silk, Hair, Gold or Silver, or any other, but such as shall be made of Wool only, or be put into any Coffin lined or faced with Flax, Hemp, Silk or Hair, upon Pain to forfeit 5*l.* to the Poor, for raising a Stock to set them on Work, to be levied by the Church-wardens and Overseers, or any of them, by Warrant from any Justice of Peace, Mayor, Alderman, or Head Officer, by Distress and Sale of the Goods of the Party interred, or in Default thereof of the Goods of any having a Hand in putting the Party thereunto, 18 Car. 2. cap. 4.

But the said Statute of 18 Car. 2. proving ineffectual, the same was repealed by the Statute of 30 Car. 2. cap. 3. whereby it is enacted, that no Corps shall be buried in any Shift, Shift, Sheet or Shroud, or any Thing whatsoever made or mingled with Flax, Hemp, Silk, Hair, Gold or Silver, or in any Stuff or Thing, other than what is made of Sheep Wool only, or be put into any Coffin lined or faced with any sort of Cloth, Stuff or other Thing that is made of any material but Sheep Wool only, upon Pain to forfeit five Pounds.

Forfeiture. *Affidavit.* An *Affidavit* under the Hands and Seals of two Witnesses, (and under the Hand of the Magistrate or Officer before whom it was sworn, for which nothing shall be paid) must be brought to the Minister within eight Days after the Party is interred, that he was not buried contrary to the said Act of 30 Car. 2. which shall be taken before some Justice of Peace, Master of Chancery, Ordinary or Extraordinary, Mayor, Bailiff, or other chief Officer of the City, County, Borough, &c. where the Party was buried: And if no such *Affidavit* be brought, the Minister shall give Notice thereof under his Hand to the Church-wardens or Overseers of the Poor, who within eight Days after shall repair to the chief Magistrate in any Town, &c. if buried there, else to a Justice of Peace, who upon Certificate thereof from the Minister, &c. shall grant a Warrant for levying the Forfeiture by Distress and Sale of the Goods of the Party deceased; or in Default thereof, of the Person's Goods in whose House the Party died, or the Goods of any that had a Hand in putting such Party into any Shroud, Coffin, &c. contrary to the said Act, or that ordered the same: And if such Person was a Servant and died in his Master's Family, the Masters Goods to be liable; and if such Person died in his Parents Family, the Parents Goods to be liable; one Moiety of which Forfeiture shall be to the Poor of the Parish where the Party is buried, the other to him that will sue for the same. *Ibid.*

Forfeiture by Justice of Peace, &c. Ministers, Church-wardens, and Overseers, Justices of Peace or chief Magistrates neglecting their Duty afore said, shall forfeit five Pounds

Pounds for every Offence, to be recovered by Action of Debt, Bill, Plaint, &c. wherein the Prosecutor shall recover his full Costs, so as the Suit be commenced within six Months after the Offence committed; one fourth Part of the Forfeitures to the King; two fourth Parts to the Poor of the Parish, where the Offender dwells, and one fourth Part to the Informer.

Ibid. Every Minister shall keep a Register of all Burials and Affidavits, and where no Affidavit is brought as aforesaid, shall enter a Memorial thereof against the Name of the Party interred, and of the Time when he notified the same to the Church-wardens or Overseers of the Poor. And the Overseers when they give up their Accounts at the Sessions, or to any two Justices at their Monthly Meetings, shall give an Account of the Name and Quality of every Person interred since their former Account; and of such Certificates, and of their levying the Penalties, and of their Disposal thereof, on Pain of xl. to be levied by Distress and Sale of Goods, by Warrant from the said Justices or two of them: And their Accounts shall not be allowed till they have accounted for the Burials.

Ibid. No Penalty shall be incurred, where the Party died of the Plague. And now by the Statute of 32 Car. 2. (where no Justice of Peace shall reside or be to be found in any Parish where any Party shall be interred) such Oaths or Affidavits may be administered, not only by such Magistrates as aforesaid, but by any Parson, Vicar or Curate in the same County, other than of the Parish or Chapel of Ease, where the Party is interred, and they are to attest the same under their Hands *Gratis*.

6 & 7 W. Collectors of the Duties on Burials may distrain for Non-payment on Demand: And may lawfully in the Day-time break open any House, Chest, &c. in the Presence of a Constable, &c. And where no Distress is to be had, and Non-payment for ten Days, the Person may be committed by Warrant of two or more Commissioners or Justices of Peace, to the Common Gaol without Bailment, until Payment.

Ibid. Justices of Peace in their several Counties, are to be Commissioners for the Execution of this Act, during the last four Years.

Ibid. Collectors at their Year's End, shall make a Transcript of the Duties arising within their Limits, with the Names of two other fit Persons to succeed in their Office, which they shall deliver to two or more Justices of Peace, who shall place the same in the Office for the ensuing Year.

Ibid. Justices of Peace during the last four Years, may rectifie the Rates at Quarter-Sessions, upon Appeal.

Bullion.

HE who hath unlawful Bullion, and cannot prove on Oath, that before the Melting thereof it was not Coin current, or Clipping, may be committed in Order to be tried on an Indictment for melting the current Coin.

Any Person with the Assistance of a Constable, may break and enter the House of a Person suspected to have unlawful Bullion, and seise what he finds, and carry the Person before a Justice of Peace.

6 & 7 W. cap. 17.

CH A P.

CHAPTER XIX

Butcher.

Every Minister shall keep a Register of all Butchers and Affidavits, and where no Affidavit is brought as aforesaid, shall enter a Memorial.

A Butcher that sells Swines Flesh meat or any Flesh that dies of the Murrain, shall be fined, and for the second Offence put into the Pillory. 31 Hen. 1. c. 7.

A Butcher that flits or cuts an Ox-hide, or any Hide, forfeits 20d. He that sells a putrified Hide, forfeits 3s. 4d. and kills Beef to sell under two Years, or Calf under five Weeks, 6s. 8d. for every Day, by 1 Jac. 1. But the Clause as to Calves, is repealed by 22 & 23 Car. 1. Penalty for killing or selling Victuals on the Sabbath-Day. *Vide Tit. Sabbath.*

He that buys fat Oxen, &c. and sells them again alive, forfeits every Ox, &c. so bought, 2 & 3 Ed. 6. cap. 17. See 19 Car. 2. cap. 8. *Postea, Tit. Cattle.*

If any Butcher in London or Westminster, or within ten Miles thereof, shall buy any fat Cattle, and sell the same again either alive or dead to another Butcher, he shall forfeit the Value of such Cattle. 23 Car. 2. cap. 19.

And if any fat Cattle bought in Smithfield Market, shall afterwards be brought into the said Market to be sold, the same shall be seized by the Bailiff of the Market; and forfeited to the City of London. By this Statute that Clause in the Act, 1 Jac. 1. cap. 12. by which 'tis restrained to kill any Calf to sell under five Weeks old, is repealed.

By the Statute 2 & 3 Will. none shall breed, feed, or keep any Swine in London, Westminster, or Southwark, in the Houses or back-sides of the paved Streets, where the Houses are contiguous, on Pain of Forfeiture of the Swine, to the Poor of the Parish. 2 & 3 Will. cap. 8. Hogg.

By the Statute 5 Anna, no Butcher in London or Westminster or within ten Miles thereof, shall sell or expose to Sale, any fat Cattle or Sheep alive or dead, on Pain of forfeiting double the Value; one Moiety to the Crown, and the other to the Informer with Costs.

But by the Statute 7 & 8 Anna, 'tis declared that the said Clause shall not extend to the Selling Carcases of Calves, Sheep, or Lambs, by one Butcher to another. 7 & 8 Anna, cap. 6.

By the Statute 9 Anna, 'tis enacted that if the raw Hide of any Ox, Bull, Steer, or Cow, or the Skin of any Calf, shall wilfully or negligently be gashed, or cut in Fleaing, or being gashed or cut shall be exposed to Sale by any Person; he who cut or gashed it, or offered such Hide to Sale, shall forfeit 2s. 6d. for every Hide, and one Shilling for every gashed Calf's Skin; one Moiety to the Poor of the Parish where the same shall be found, and the other to the Informer. Such Offences to be heard and determined by two neighbouring Justices, residing near the Place where the Forfeitures shall be incurred, which Justices may upon Complaint made within three Months after the Seizure or Offence done, summon the Party accused and the Witnesses, and, upon his Appearing or Contempt to appear (upon Proof of Notice given) may examine the Witnesses on Oath, 9 Anna, cap. 11. Paragraph 71.

and give Sentence accordingly; and upon Conviction, may issue a Warrant to levy the Penalty on the Goods of the Offender by Distress and Sale thereof; if not redeemed within six Days, the Party grieved may Appeal to the Sessions, who may summon and examine the Witnesses on Oath, and finally determine, and in Case of Conviction may issue Warrants to levy the Penalty.

CHAP. XX.

Butter.

- 14 Car. 2. c. 26.** **T**HE Kilderkin must contain 112 lb. nete or above, every Pound sixteen Ounces besides the Cask. Every Firkin fifty-six Pounds besides the Cask; every Pot of Butter four Pounds nete besides the Pot. *14 Car. 2. cap. 26.* §. 1. Contents.
- 14 Car. 2. c. 26.** No old or corrupt Butter shall be mixed with new or sound Butter, nor Whey-Butter mixed with Cream-Butter but each Sort by it self, and every Cask or Pot shall be of the same, good throughout. No Butter shall be salted with great, but with small Salt; nor more Salt mixed than is Necessary, upon Pain for every Offence in Quantity or Quality, the Value of the Butter so false packed; and where the Kilderkin, Firkin, or Pot, is not of Measure, six Times the Value of every Pound wanting. §. 2. Mixture.
- 14 Car. 2. c. 26.** Every Person selling Vessels of Butter, shall deliver the Quantities aforesaid, or else make Satisfaction to the Buyer according to the Price it was sold for.
- 14 Car. 2. c. 26.** Every Person repacking any Butter to sell the same again, shall for every Cask or Pot so repacked, forfeit the double Value thereof. §. 3. Packing.
- 14 Car. 2. c. 26.** Every Person packing Butter in Casks, shall put it into good Casks, of dry, sound and well seasoned Timber; and shall put upon the same a Mark of the just Weight thereof, and when filled, put thereon the first Letter of his Christian Name, and his Surname at length, with an Iron-brand, upon Pain for not setting the Weight or Name 10s. for each C. Weight, and so proportionably. §. 4. Casks.
- 14 Car. 2. c. 26.** Every Potter shall set the Weight of the Pot, and the first Letter of his Christian Name, and his Surname therein, or forfeit twelve Pence for every Pot sold for packing of Butter. No Person shall pack any Butter in any Pot, but such as is so marked. §. 5. Marks.
- 4 & 5 W. & M. c. 7.** After the Factor or Buyer hath approved the Butter, he shall set his Seal or Mark upon the said Butter. And if the same shall afterwards be exchanged or opened, and the Cask wherein the same is put, be changed, or bad Butter packt up and mixt with good, or any Fraud be committed by the Seller, the Offender being convicted upon Oath, before one or more Justices of the Peace, or upon his own Confession, shall forfeit 20s. to be levied by Distress, &c. restoring the Overplus. And Constables of Parishes, &c. are hereby authorized to levy the same accordingly by Warrant under Hand and Seal of the said Justice or Justices. Butter to be marked. Penalty.
- Ibid.** All Warehouse-Keepers, Weighers, &c. shall from the 1st of April 1693. keep a Book, and enter therein all Butter and Cheese, as the same comes to them, with the Time when received, the Quantity, and the Owner's Name; and on Shipping off the Goods shall make Entries Entries.

Entries of the Time when, the Master's and Vessel's Name, and to whom signed: Which Book may be inspected *gratis*. And if any Warehouse-keeper, &c. shall not keep such a Book, or not make Entries, as aforesaid, or undue Entries, or refuse in the Day-time to produce the Book to be searched, such Offenders being convicted in Manner aforesaid, shall forfeit for every Firkin of Butter 2*s.* and 6*d.* and for every such Weigh of Cheese 2*s.* and 6*d.* and for every other the aforesaid Offences, 2*s.* and 6*d.* to be levied as aforesaid; and for want of Goods to levy such Penalty, the Justice before whom such Conviction shall be made, may commit the Offender to Gaol till the Penalty be satisfied.

Vessel.

Masters of Vessels coming to lade Butter and Cheese, who shall refuse to take on Board any such Butter and Cheese as shall be tendred to be shipped by any such Warehouse-keeper, &c. before their Vessels be laden, they shall forfeit, being convicted as aforesaid, for every Firkin of Butter so refused 5*s.* and for every Weigh of Cheese 2*s.* and 6*d.* to be levied as aforesaid; one half to the Informer. Ibid.

Appeal.

Persons aggrieved by the Determination of any Justice of Peace, may appeal to the next general Quarter-Sessions, whose Determination shall be final: The Person appealing first giving Security of 20*l.* with one or more Securities, to the Liking of the Justice of Peace, to pay Costs in Case the Appellant be not relieved; the said Costs to be paid within a Month after Determining the Appeal. Ibid.

4 & 5 W.
cap. 7.

By the Statute 4 & 5 Will. after the Factor or Buyer of Butter, hath bought and contracted for the same and approved thereof, at the Seller's House or Place of Sale, by searching and weighing the same if he think fit, the Seller shall not afterwards be charged or liable to any Penalties in the aforesaid Act of 14 Car. 2. upon any Pretence of want of Weight, or false Packing, or mouldy Butter, or the Tare and Weigh being not set on the Cask.

He who exchanges or opens a Cask of Butter sealed or marked by the Factor or Buyer, or the Cask changed, or bad Butter put up and and mixed with good, and every Fraud committed by the Seller, the Offender being convicted on Oath of one Witness, or by Confession, before one or more Justices, forfeits 20*s.* for every Firkin and Offence; to be levied by Distress, by a Warrant of the Justice or Justices, rendering the Overplus after Charges defrayed; one half of the Penalty to the Poor, &c. the other to the Informer.

Warehouse-keepers, Weighers, Searchers, or Shippers of Butter and Cheese in any Port, refusing to receive the same, or to take Care thereof, or to ship the same successively, being convicted thereof as before mentioned, shall forfeit 10*s.* for every Firkin of Butter, and 2*s.* for every Weigh of Cheese, to be levied by Distress and Sale, &c. and employed as before mentioned.

Warehouse-keeper, not keeping Books, and making Entries of Butter and Cheese, or making full Entries, or refusing in the Day-time to produce the Books to be inspected, shall forfeit 2*s.* 6*d.* for every Firkin of Butter, and every Weigh of Cheese, and the like for every other Offence, to be levied by Distress and Sale as aforesaid, and to be employed as before mentioned, and for want of Distress, to be committed till paid.

Masters of Vessels, coming to lade Butter or Cheese, or their Servants refusing to take on Board, any Butter or Cheese, as shall be tendred to be shipped by any Warehouse-Man before their Vessels are loaded

loaded, shall forfeit 5 s. for every Firkin of Butter, and 2 s. 6 d. for every Weigh of Cheese, to be levied and employed, as before, &c.

This Act doth not extend to the Counties of *Chester* and *Lancaster*, nor to the County of the City of *Chester*.

Persons aggrieved may appeal to the next Quarter-Sessions; the Appellant entring into a Bond of 20 l. with one or more Sureties, to the Liking of the Justice of Peace, to pay such Costs as the Court shall award, within one Month after the Appeal is heard, and he not relieved: The Determination of the Sessions shall be final.

Buttons and Button-holes.

14 Car. 2. cap. 13. **BY** the Statute 14 Car. 2. the Importing and Exporting of Buttons made of Hair, Silk, or Thread, is prohibited, and they who sell or expose such imported Buttons to Sale, forfeit 50 l. for every Offence.

The Importer forfeits 100 l. besides the Buttons; one Moiety of these Forfeitures to the Crown, the other to the Informer.

Justices may issue out Warrants to seize foreign Buttons.

10 W. 3. cap. 2. Selling or setting on Clothes any Buttons made of *Cloth*, *Serge*, *Druggat*, *Frize*, *Camlet*, or other Stuffs of which wearing Garments are usually made; the Forfeiture is 5 l. for every Dozen of Buttons or Button-holes, to be divided as aforesaid, and to be recovered by Action of Debt, or upon a Complaint to two Justices, who are to summon and examine the Witnesses on Oath, and levy the Penalty, returning the Overplus.

There lies an Appeal to the next Quarter-Sessions after Notice given of the Order of the two Justices, who are to summon and examine the Witnesses likewise on Oath, and finally to determine the Appeal; and if against the Appellant, then to give Costs.

4 G. c. 7. And in order to make this Act more effectual, 'tis enacted by a subsequent Statute 4 Geo. that after the 25th Day of *March* 1718, no Buttons or Button-holes made of Cloth, &c. shall be made or set on wearing Apparel, the Forfeiture is 40 s. for every Dozen, and so in Proportion for a less Number; one Moiety to the Informer, the other to the Poor of the Place, after the Charges of the Conviction is deducted; and if not paid within fourteen Days after Demand, then the Justice may issue his Warrant to distrain, and if no Distress can be found, then to commit the Offender for three Months there to Labour.

The Prosecution must be within three Months after the Offence committed or discovered.

Conviction must be by one Justice not concerned in the Matter, and on the Oath of one Witness; but the Party may appeal to the next Quarter-Sessions, and shall have Costs, &c.

But if the Prosecution is at Law, the Defendant may plead the General Issue, and give the Act in Evidence, and if he recover, shall have double Costs.

All wearing Apparel with Buttons or Button-holes made of the same Cloth, Serge, &c. and exposed to Sale, shall be forfeited, and applied to the Uses aforesaid.

Any Tailor or other Person, causing his Servant to make Clothes contrary to this Act shall be subject to the like Forfeitures and Penalties.

This shall be taken for a publick Act.

Cards and Dice.

BY the Statute 3 Ed. 4. playing Cards and Dice are prohibited to be imported from beyond Sea, on Pain of Forfeiture of one Moiety to the Crown, and the other to the Person seising. ^{3 Ed. 4. cap. 4.}

The aforesaid Act, so far as it relates to the prohibiting the Importation of Cards and Dice, is revived, and declared to stand in Force in every Part of Great Britain. ^{9 Ann. cap. 23.}

All Makers of Cards and Dice, before they begin to make them, shall send Notice in Writing of the Place where they intend to make the same, to the Commissioners of the Stamp-Duties, or their Officers next adjoining, and the like Notice shall be given as often as they change the Places of Making them; and as often as any Person shall set up the Trade of making Cards or Dice, he shall give the like Notice on Pain of 50*l*.

One Justice of Peace may take the Affidavit of any Person, declaring his Knowledge or Suspicion, that playing Cards or Dice are caused to be made in any Place, without Notice thereof in Writing given to the Commissioners of the Stamp-Duties at their head Office. ^{6 G. c. 11. § 57.}

And after such Affidavit made he may issue out his Warrant directed to an Officer of the Duties on Cards or Dice, giving him Power in the Day-time, and in the Presence of a Constable, to break open any Door where the Cards or Dice are suspected to be made or Making, and to seise all such Cards, Dice, Tools and Materials for making the same, and to detain and keep the same in such House or Place as the Commissioners shall think fit; all which are forfeited, unless claimed and replevied by the Owner within five Days after the Seisure, and to be sold by the Direction of the Commissioners; one Moiety of the Money arising by such Sale to the King, and the other to the Informer.

CHAP. XXI.

Carriages.

§. 1.
Carriage
for Navy or
Ordnance.

When Occasion shall require, upon Notice, by Warrant under the Hand and Seal of the Lord High Admiral, or of two principal Officers or Commissioners of the Navy, or of the Master of the Ordnance, or of the Lieutenant of the Ordnance, of what Carriages are required, two Justices of Peace near the Place, shall issue out Warrants to such Places as they think fit, not above twelve Miles distant from the Place of Landing, to send to; and at certain Place and Time, such Number of Carriages with Horses or Oxen sufficient, as is required, the Owner or Servant to receive twelve Pence for every reputed Mile for a Tun of Timber, and eight Pence per Mile for every Tun of other Provisions. ^{14 Car. 2. cap. 10.}

§. 2.
Refusal.

Every Person refusing, or having undertaken his Duty, neglecting or delaying it, upon Proof or Conviction by Oath of the Constable, or other Officer, or Oath of two Witnesses, before the said Justices, or Mayor, or chief Officer of the City or Corporation where they dwell; the Party for every such Offence shall pay twenty Shillings, which in

Default of Payment, upon Demand, is to be levied by Distress and Sale by Warrant of the Justices, rendering the Overplus; the Charge of Distraining being deducted. 14 Car. 2. cap. 20.

No Carriages to be compelled to travel further, or to continue in the Service longer than the Justices shall by Order direct, and shall receive Payment at the Place of Landing. 14 Car. 2. cap. 20.

The Justices of Peace that shall summon any Carriages in New Forest for Timber, may allow four Pence per Mile, for every Mile they shall go empty to the Place of Landing. 14 Car. 2. cap. 20. ^{§ 3. Allowance.}

A Justice of Peace, or other Officer, taking any reward for Excuse from Service, or grieving any Person of ill-will, or impressing more than is required, upon due Proof and Conviction, shall forfeit ten Pounds, to be recovered by Warrant of Debt in any of the King's Courts of Record. 14 Car. 2. cap. 20. ^{§ 4. Bribes.}

The Clerk or chief Officer of the King's Carriages shall three Days before his Arrival, by Warrant from the Green-cloth, give Notice to Two or more Justices of Peace next adjoining, to provide such Carts and Carriages as his Majesty shall have Use of, expressing the Number, Time and Place, which shall consist of four able Horses, or six Oxen, or four Oxen and two Horses, for each of which the Owner shall receive six Pence per Mile; and if any shall refuse to provide them for ready Money tendered, or refuse to appear, then upon Proof by the Constable or Officer's Oath, or two Witnesses before the Justices of the County, or Mayor, or chief Officer of the City or Corporation where the Party inhabits, he shall forfeit forty Shillings to be levied to the King's Use, by Warrant from the said Justices, or Mayor or chief Officer, by Distress and Sale, rendering the Overplus: But none shall go above a Day's Journey from the Place of Landing. 13 Car. 2. cap. 8. ^{§ 5. Carriages for Process.}

Any Two or more Justices next the Road, upon Notice in Writing from the Green-cloth, and Avenor, under their Hands, shall set down the Prices of Hay, Oats, and other Accommodations for Horses for such Time as his Majesty shall stay there; and one Day before his Majesty's coming shall proclaim the same in that Town and Village adjoining: And if any take more, upon Conviction, by Confession or Oath of one Witness before any one Justice of Peace, he shall pay to the Party forty Shillings, to be levied as above. ^{§ 6.}

If any Justice, Mayor, Constable, or Officer shall take any Reward to excuse any Carriage, or shall injuriously, out of Malice, charge any who ought not to make such Carriage, or impress more Carriages than be required, he shall forfeit ten Pounds to the Party grieved, to be recovered in Debt in any Court of Record. 13 Car. 2. cap. 3. ^{§ 7. Bribes.}

The Clerk or chief Officer of his Majesty's Green-Cloth, shall three Days at least before his Majesty's Arrival give Notice by Warrant from the Green-Cloth in Writing to Two or more of his Majesty's Justices of Peace next adjoining, to provide such a Number of Carts and Carriages from the Places next adjacent, as his Majesty shall have present Use of, expressing the Certainty of that Number, as also the Time and Place when and where they are to attend; which Carriages shall consist of four able Horses, or six Oxen, or four Oxen and two Horses, for each of which Cart or Carriage the Owner shall receive 6d. for each Mile they go laden: And upon Refusal or Neglect, &c. shall upon Conviction thereof by the Oath of the Constable, &c. or two other credible Witnesses before the said Justices of Peace of the County, or Mayor, &c. where he or they inhabit (which Oath they shall

Forfeiture. shall have Power to administer) the Party so refusing or neglecting, shall forfeit 40 s. to the King's Use, to be levied by Distress, &c. rendering to the Party the Overplus, by Warrant from the said Justices, &c.

But one Day's Journey. No Horses, Oxen, &c. shall be forced to travel above one Day's ^{1 Jac. 2. c. 10.} Journey from the Place of Lading, nor without ready Money: And in case any Justice of Peace, Mayor, &c. shall take any Gift to spare any such Person, or shall injuriously charge or grieve any Person thro' Envy or Malice, or shall impress more Carriages than directed by the Green-Cloth, That then upon due Proof and Conviction the Party so offending shall forfeit 10 l. to the Party grieved, or any who shall sue for the same, &c.

Price of Corn, Hay, &c. And whereas extraordinary Prices for Hay, Oats, &c. have been ^{Ibid.} exacted from his Majesty's Servants during their Abode, any Two or more of the Justices of Peace near adjoining to the Road thro' which his Majesty is to pass, shall immediately after Notice from the Green-Cloth and Avenor under their Hands and Seals, set down reasonable Rates to be paid during his Majesty's Abode there for Hay, Oats, and other Accommodations for Horses, as they in their Discretions shall think fit, whereof Proclamation to be made a Day at least in some neighbouring Town before their Majesties Arrival. And if any Person shall take any greater Sum than as aforesaid limited, and be thereof convicted by Confession, or by the Oath of one credible Witness before one Justice of Peace (which Oath the said Justice of Peace is hereby authorized to administer) then to pay to the Party grieved 40 s. the Sum to be levied by Distress, by Warrant from the said Justice, and by Sale thereof, returning the Overplus to the Party, (Charge of Distress first deducted). This Act to have Continuance no longer than the first Sessions of next Parliament.

Coaches. For the better Regulating such as are licensed to keep Hackney or Stage-Coaches, and Punishment of Offenders therein, it shall be lawful for the Commissioners by this Act appointed, or the major Part of them, to make By-Laws, &c. and to annex reasonable Penalties for the Breach thereof, and By-Laws to be approved of by the Lord Chancellor, &c. for the Time being, and by the Chief Justices of either Bench and Chief Baron of the *Exchequer*, or any Three of them: And after such Allowance the same shall be published, and the Penalties put in Execution by any Justice of Peace, or other Magistrate of the Place where the Offence is committed: But no Person shall be punished twice for the same Offence.

§. By the Statute 6 *Anne*, the Statute 7 & 8 *Will. 3.* which ap- ^{6 Ann. cap. 29.} points the Number of Horses and Oxen drawing in Pairs with a Pole between the Wheel-Horses, or in double Shafts, is repealed.

And by the said Act 'tis provided, that no travelling Waggon or Cart wherein any Burden shall be carried (except about Husbandry, Manuring of Land, carrying Hay, Straw, or Corn unthreshed, Coal, Chalk, Timber, Materials for Building, Stones or Artillery) shall go in the Highways, or be drawn with more than six Horses, Oxen, or Beasts, upon Pain that the Owner of such Waggon shall forfeit for every Offence 5 l. one Moiety to the Surveyor of the Highways of the Place where the Offence was done, to be employed in Repairing the same, the other Moiety to the Discoverer or Prosecutor, so as he be an Inhabitant of the Town, Village, or Place.

This Penalty is to be levied by Distress of the Horses or Oxen of the Owner of the Waggon, by a Warrant under the Hand and Seal of

one Justice; and if not paid within five Days after the Distraining, then to sell the Distress, rendering the Overplus, after Charges deducted.

9 Ann.
cap. 18.

By the Statute 9 *Anna*, any Person may discover and prosecute another drawing with more than six Horses, contrary to the Statute 6 *Anna*, and may seize or distrain all or any of the Horses, and deliver the same to the Surveyors of the Highways, or other Officer of the Place where the Offence was done; and if the $\text{5} \text{ l.}$ is not paid within three Days, then the Distress is to be sold, and the Money delivered to the Justice to be distributed as by the said Statute 6 *Anna* is directed.

The Person seising, &c. and neglecting to deliver the Cattle to the Surveyor, &c. or to other Parish-Officers, forfeits 20 l. to be levied by Distress and Sale, &c. by a Warrant of one Justice; and if no Distress can be had, then to be committed to the common Gaol till paid: One Moiety to the Informer, the other to be laid out for Repairing the Highway.

Any Person employed by a Carrier, or another, and subject to the Penalties of that Act, and driving or assisting to drive any travelling Waggon or Cart, with more than six Horses, forfeits $\text{5} \text{ l.}$ to be levied and disposed as before, &c.

So much of the Statute 6 *Anna*, as relates to drawing up Hills with more than six Horses is repealed.

1 Geo.
cap. 10.

It being found impracticable to draw a Waggon with six Horses, and no more, it was appointed by a Statute 1 *Georgii*, that the Drawing should be as by the Statute 22 *Car. 2. cap. 12. (i. e.)* not with above five Horses at length; and if drawn with more, then they shall draw all in Pairs, except one Horse, upon Pain that the Owner for every Offence shall forfeit $\text{5} \text{ l.}$ one Moiety to the Surveyor, &c. as by the Statute 6 *Anna*.

5 G. c. 12.

By the Statute 5 *G.* 'tis enacted, that no travelling Waggon for Hire shall be drawn with more than six Horses at length, in Pairs or sideways, nor a Cart with more than three Horses, the Waggoner forfeits all the Horses above Six, and the Carter all above Three, with all Geers, Bridles, Halters and Accoutrements, to the sole Use and Benefit of any Person who shall seize the same.

The Person seising, &c. must deliver the Horses, &c. to some Constable or Parish-Officer next the Place where the Seizure was made, who is to receive and keep them till the Seisor shall prove the Offence on Oath before a Justice, &c. and then the Justice is to make a Precept directed to such Parish-Officer, to deliver the Horses to the Seisor, paying reasonable Charges, such as the Justice shall appoint for Keeping the same.

He who with Force, or otherwise, attempts to hinder the Seising and Carrying away, &c. or shall rescue the same, or use any Violence to the Seisor, shall be committed by one Justice to the common Gaol for three Months without Bail, and shall likewise forfeit 10 l. to be levied by Distress and Sale, &c. by a Warrant of one Justice; and if not paid within three Days after the Distress taken, then the Person seising may sell the Distress, rendering the Overplus, the Charge of Distraining and Selling being deducted.

No travelling Waggon for Hire, having the Wheels bound with Streaks of a less Breadth than two Inches and an half when worn, or being set on with rose-headed Nails, shall be drawn with more than three Horses.

This

This Act doth not extend to Waggon, Wains, Carts or Carriages employed in Husbandry, &c. (*ut prius*)

By the Statute 6 G. he who carries at one Load in the Cities of 6 G. c. 6. London or Westminster, or within ten Miles thereof, in Waggon or Carts having their Wheels bound round with Tire of Iron, more than twelve Sacks of Meal, each Sack containing five Bushels and no more, nor any more than twelve Quarters of Malt, nor more than 700 and an half of Bricks, nor more than one Chaldron of Coals, forfeits one of the Horses, together with the Geers, Bridles, &c. to any Person who shall seise the same in such Manner, and to such Uses as in the Stat. 5 G. the Penalties and Forfeitures are to be levied and applied.

CHAP. XXII.

Cattle.

§. 1.
Selling live
Cattle.

NO Person shall buy any Oxen, Ronts, Steers, Kine, Heifers, Calves, Sheep, Lambs, Goats, or Kids alive, and sell the same again, unless he keep the same five Weeks in his own Grounds; or where he hath Herbage by Grant or Prescription, upon Pain to lose double the Value of the Cattle; one Moiety to the King the other to the Informer. Edw. 6. 14

§. 2.
Drovers.

II Drovers licensed in Writing by three Justices of Peace, (Quorum unus,) may buy Cattle and sell them again in Fairs and Markets, at reasonable Prices, distant from the Place where bought, forty Miles at least. So that such Cattle be not bought by Forestalling. E. 6. 14.

Certiorari. See Chap. 195.

Challenge. See Chap. 186.

CHAP. XXIII.

Churches.

§. 1.
Uniting.

THE Bishop of the Diocese, where two Parishes lie in a Corporation, with the Consent of the Mayor, Aldermen, and Justices of Peace, Bailiff or Bailiffs, or other chief Officers, or the major Part of them; and the Patrons may by due Order of Law, unite the two Churches or Chapels, and may appoint where God's Worship shall be performed; and to that the Parishioners shall resort, and pay their Tithes. 17 Car. 2. cap. 3.

§. 2.
Striking.

If any shall strike another in a Church or Church-yard, or draw a Weapon in a Church or Church-yard, with an Intent to strike; and being thereof convicted by Verdict, or Confession, or Oath, of two Witnesses, before (amongst others) the Justices of Peace in their Sessions, shall be adjudged to have one of his Ears cut off; and having no Ears, then shall be burned in the Cheek with an hot Iron, having the Letter F. 5, 6 E. 6. 4.

But

Cromp. 15. 4. Dy. 275. 9. But an Indictment alone with an Oualawry upon it; is not such a Conviction as to inflict the corporal Punishment required by this Act.

A Man takes up a Stone in a Church-yard; and offers to throw at another; or having a Hatchet or Ax in his Hand, offers to strike another; this is not within 5 E. 6. by two Justices; for these are not such Weapons as are drawn, as a Sword and Dagger. *§. 3. Conviction.*

An Indictment at the Sessions for Striking with a Weapon in the Church-yard was removed into B. R. and moved, that the Defendant might be admitted to a Fine, but it was denied, because the Statute appoints Loss of an Ear as well as a Fine. *Palm. 344.*

1 Eliz. c. 2. By the Statute 1 *Eliz.* all Persons above the Age of sixteen Years must repair to their Parish-Church, Chapel, or to some Place where the Common Prayer is used, and abide there soberly during the Time of Service; the Forfeiture is 12 d. for every Offence, to be levied by the Church-wardens, for the Use of the Poor of the Parish; and the Party may likewise be punished by Ecclesiastical Censures, having no reasonable Excuse to be absent.

23 Eliz. cap. 1. By the Statute 23 *Eliz.* Persons not coming to Church, according as appointed by the Statute 1 *Eliz.* shall forfeit 20 l. per Month, and if he forbear for twelve Months, after a Certificate thereof made by the Ordinary into B. R. then one Justice of the County where the Party dwelt, may bind him with two Sureties in 200 l. to be of the Good Behaviour till he come to Church; the Informer is to have the third Part of the Forfeiture. *By Stat. 1 W. 3. c. 18. This Act is not to extend to Protestant Dissenters. *The other two Thirds*

to the Crown, one to its own Use, the other to the Poor; Conviction must be at Quarter-Sessions.

3 Jac. 1. cap. 4. §. 27. By the Statute 3 *Jac. 1.* a Person not coming to some Church or Chapel, forfeits 12 d. to the Poor, to be levied by Distress and Sale of Goods, and in Default of Distress to be committed; the Prosecution must be within a Month, and the Conviction may be made by Confession, or Oath of one Witness. *By Stat. 1 Will. 3. This Act is not to extend to Protestant Dissenters.*

He who keeps any Servant in his House; or other Person not coming to Church for one Month together, forfeits 10 l. per Month.

The Husband shall not be punished for the Offences of his Wife against this Statute, neither shall any married Woman be charged with any Penalty or Forfeiture by this Act.

Church and Church-yard.

5 Ed. 6. cap. 4. The Defendant was indicted on the Statute 5 *Ed. 6.* for Striking in *Striking.* St. Paul's Church-yard; it was objected, that it being the Church-yard of a Cathedral, it was not within the Statute; but adjudged to the contrary. *Cro. Eliz. 234. Dethick's Case.*

Indictment for Drawing his Dagger in a Church against T. S. not setting forth, that it was with an Intent to strike him, for which Cause it was adjudged void. 2 *Leon. 188. Perchall's Case. Cro. Car. 464. Cholmley's Case. S. P.*

1 Jac. 2. c. 22. Debts incurred for the Building the Church of St. James's to be charged upon the Inhabitants and Occupiers of Lands, Tenements, &c. within the said Parish to be paid in four Years by sixteen quarterly Payments successively, to be taxed by the Church-wardens and Vestry-men of the said Parish, according to the improved Value. All which said Assessments shall be confirmed and allowed by the Two next Justices of the Peace of, and dwelling within the City and Liberties of West-
S. James's Church. Church-wardens and Vestry to Tax.

Westminster under their Hands and Seals, and be collected by such Persons Inhabitants of the said Parish, as the said Vestry-men, or any Six or more of them shall from Time to Time under their Hands and Seals appoint.

The Preacher 100*l.* per Annum. The Minister of *St. James's Church* to have 100*l.* per Annum, to be paid quarterly by the Church-wardens for the Time being, and upon Default made after lawful Demand made at the Dwelling-house of any of the said Church-wardens, that then the two next Justices of the Peace of the Place, may upon Complaint made, give Relief according to the true Intent of this Act, and may cause the Church-warden or Church-wardens offending therein, to be imprisoned until Payment be made of what is behind and unpaid. 1 Jac. 2. c. 22.

Notice to Householders to make Taxes. Notice to be given in the Church every *Easter* by the Church-wardens to such and so many of the substantial Householders, as they think fit, to meet with them on the next *Tuesday* after *Easter* in the Vestry or Chancel of the said Church, to make the said Assessment. And upon Default of Notice or Meeting, every Person offending therein which shall not make Proof of a reasonable Cause of his Absence before some one Justice of Peace of the City or Liberty of *Westminster*, shall forfeit the Sum of 5 *l.* to the said Preacher, to be levied by Distress and Sale of the Offender's Goods, by Warrant under the Hand and Seal of any one Justice of the Peace, rendering the Overplus to the Owner, after Deduction of reasonable Charges for levying the same. Ibid.

Officers punished for Negligence. If the Collector of or for any Tax made by Virtue of this Act shall refuse to accept the Office, or be negligent in his Duty, shall forfeit for every Offence the Sum of 40*s.* to the Use of the Poor of the said Parish, to be levied by Warrant of any one Justice of Peace under his Hand and Seal, by Distress and Sale of his Goods, as aforesaid. And if any Person shall refuse to pay the Money on him or her so rated or assessed by Virtue of this Act, it shall and may be lawful for the said Collectors by Warrant under the Hands and Seals of any two Justices of the Peace of the Place, to levy the same by Distress and Sale of the Goods of the Offender, &c. And if any Person so refusing or neglecting, shall convey away their Goods whereby the Sum assessed cannot be levied; any two Justices of Peace are hereby empowered by Warrant under their Hands and Seals to imprison the Offender (not being a Peer or Peerefs of this Realm) and to be detained in the common Gaol of the said City and Liberty of *Westminster* till the Sum so taxed be paid. Ibid.

Justices to reconcile Differences. And if Difference arise between Landlord and Tenant concerning the said quarterly Assessments, or if any Person find him or her self grieved with any Tax made by Virtue of this Act, any two Justices of the Peace as aforesaid, shall hereby have Power finally to determine the same as they shall think meet.

Scavengers to account. Scavengers and Surveyors of the Highways shall account to Two or more Justices, &c. within four Days after the Electing new Scavengers and Surveyors for the ensuing Year, and shall account for what Money is remaining in their Hands to the next ensuing Scavengers; and any two Justices as aforesaid, may commit such Scavengers and Surveyors so refusing to account to the common Gaol, without Bail or Mainprize, until he make a true Account, and pay so much thereof as he shall be found in arrear. Ibid.

Clergy. See Chap. 190.

Clerk

Clerk of the Peace.

1 W. & M.
c. 21.

THE *Custos Rotulorum* to nominate the Clerk of the Peace, who ^{Clerk of the Peace} for his Mismanagement may be suspended or discharged by the Justices of Peace; and if the *Custos Rotulorum* refuse or neglect to put in another, the Justices may nominate one at their General Quarter-Sessions.

Ibid.

Custos Rotulorum to be appointed as directed by a Statute made in the 37th of H. 8. And the *Custos Rotulorum*, or other Person to whom of Right it doth belong, shall from Time to Time nominate the Clerk of the Peace.

Ibid.

Clerk of the Peace misdemeaning himself in his Office, the Justices of Peace in their General Quarter-Sessions, or the major Part of them, upon Complaint in Writing, may suspend or discharge him. And in such Case the *Custos Rotulorum* or other Person to whom of Right it doth belong, shall appoint another Person residing within such County, &c. in his Room; and in case of Neglect or Refusal to make such Appointment before the next General Quarter-Sessions after such Refusal, the Justices of Peace at their General Quarter-Sessions may appoint one, who shall be liable to all the Penalties, Conditions, &c. hereby mentioned, and may be discharged by the said Justices, as aforesaid.

ff. By the Statute 1 Will. & Mar. it was enacted, that the *Custos Rotulorum* shall appoint the Clerk of the Peace for so long Time as he behaveth himself well in the Office, so that now he hath an Estate for Life, determinable only upon his Misbehaviour; but before this Statute his Estate was very uncertain, for he was removeable with the *Custos*, whose Power is not so large since this Statute was made as it was before; for now he cannot be removed by the *Custos*, but by the Justices in Sessions, upon Complaint exhibited in Writing of his Misbehaviour, and due Proof thereof made; and in such Case if the *Custos* doth not appoint another before the next Sessions, the Justices themselves may appoint one; but in both Cases the Person thus appointed must be resident in the County.

His Business is to draw up the Process of the Sessions, to draw and read Indictments, and to record the Proceedings of the Sessions; and if he draws an insufficient Indictment, he must make another without Fee, or forfeits 5 l. to be recovered by him who will sue for it in any Court of Record.

10 & 11
Will. 3.

He must not take any Thing of a Witness who shall give Evidence against a Felon, nor more than 2 s. for Drawing an Indictment, upon Pain of 5 l. Forfeiture, with full Costs.

And if any Clerk of the Peace, or of the Excise, or his Clerk or Deputy, draw a defective Bill of Indictment, they shall draw a new one *gratis*, or forfeit 5 l. with full Costs; and all the said Forfeitures shall be recovered by him or them who shall sue for the same by Action of Debt, &c.

C H A P. XXIV.

Cloth. Clothes. See Felony.

§. 1. *One Justice Searching.* Every Justice of Peace may enter in and upon any Houses, Land, or ^{39 Eliz. c. 20.} Grounds, and search for any Tenters, Wrinches, or other Engines whatsoever, whereby any Deceit may be used in or about the Stretching of woollen Cloth; and may deface the same Tenters, &c. ^{43 El. 10. P. Drap. 118, 127.} And for the second Offence may sell them to the best Value thereof. *But the Disposing of such Money shall be by two Justices. See hic post.*

Penalty. And if upon Information made to any Justice of Peace, of any such Tenters, &c. he shall not make Search and execute this Law within seven Days, he shall forfeit for every such Default five Pounds.

Also one or two of the Justices of Peace of the Shire, next adjoining to any City, Borough, or Town Corporate within *England*, may join with them of such City, Borough, or Town Corporate, in appointing the yearly Overseers for such Cloths, &c. *Ibid.* ^{P. Drap. 115, 127. 3 E. 6. 2. 33 El. 20. 43 El. 20. P. Drap. 45, 115, 118.}

§. 2. *Two Justices Overseers.* Any two Justices of Peace within their Limits may once every Year appoint Overseers or Searchers for that whole Year following, or for a shorter Time, (at their Discretions) of any woollen Cloth, to be made or sold in any Town not being Corporate, and may charge them upon their Oaths, and bind them in Recognizance of forty Pounds a-piece, to do their best Indeavours by all lawful Ways and Means, for their Time, to see the Statutes of 3 *Ed. 6. c. 2.* and of 39 *Eliz. c. 20.* in all Points truly observed and kept within their Limits, (*sc.* within the Town or Parish where the said Overseers shall be dwelling). The Particulars seem to be these:

§. 3. *Duty of Overseers.* 1. That the Weights, Lengths and Breadths, of all woollen Cloths, be according to the Statute 39 *El.* See the Statutes 4 *Jac. c. 2.* and ^{P. Dra. 114.} 21 *Jac. c. 18.*

2. That every such Cloth have a Seal of Lead, containing the just Length and Weight. 39 *Eliz.*

3. That such be not stretched or strained. *Ibid.*

4. Where there be any Tenters, Wrinches, or other such Engine for the Stretching of Cloth. *Ibid.* ^{21 Jac. 18.}

5. That no Iron Cards or Pickards, be occupied in any woollen Cloths. 3 *Ed. 6. c. 2.*

6. That Cloths or Wools be not falsly died or coloured. *Ibid.*

7. That no Hair, Flocks, Thrums, Yarn made of Lambs Wool, Chalk, Flower, or Starch, or other deceivable Thing, be put in or upon any woollen Cloth, upon Pain to forfeit for every Offence five Pounds, to the Use of the Poor of the Parish where such Cloth is made. See 3 *Ed. 6.* and 43 *Eliz. c. 10.* and 4 *Jac. c. 2.* and 21 *Jac. c. 18.*

8. That no Cloths be in any deceivable Manner pressed, to be put to Sale, 3 *Ed. 6.* See also of the Statutes of 5 *Ed. 6. c. 6.* and 21 *Jac. c. 18.*

The Statute of 5 *Edw. 6.* speaks of Hot-presses, which is a deceitful Way of Pressing Cloths, and is much to its Damage, and makes them seem fair to the Eye, when they are full of Faults, and are dangerous also for Fire. As was attested by Cloth-workers in the King's Bench. 13 *Jac. Roll's Rep. 2 Part. p. 312.*

21 Jac. 18. Any two (or more) Justices of Peace within the County, City, Borough, or Town Corporate, where deceivable Cloth shall be made, or suspected to be made, (upon Complaint or Information of any Overseer, Searcher, or any other, of any such Offence) may grant their Warrant to call before them any Person or Persons that in their Discretion shall be thought fit to discover any such Offence, and may examine upon Oath any such Persons for the Trial and better finding out of the said Offence. And if upon such Examination it shall be found by Testimony of two Witnesses (or more) or by the Confession of the Offender, that any such Offence hath been committed, the same shall be a sufficient Conviction of the Offence; and then the said Justices shall or may certify such Offence unto the Church-wardens and Overseers (for the Time being) of the Poor of the Parish where such deceivable Cloth shall be made, under the Hands and Seals of the said Justices; and upon such Certificate, and a Warrant made by the said Justices to the said Overseers and Church-wardens for the Levying of the Forfeiture, the said Overseers and Church-wardens, or any of them, or their, or any of their Successors, immediately from and after such Certificate and Warrant delivered to them, or any of them, may levy the Sum or Sums of Money, which by the said Certificate and Warrant shall appear to be forfeited, by Way of Distress and Sale of the Offender's Goods, rendring to the Offender the Overplus, &c. and in Defect of such Distress, the said two Justices may commit the Offender to the common Gaol, there to remain without Bail, until Payment shall be made of the Sums so forfeited, to the said Overseers and Church-wardens, or some, or one of them, &c. 21 Jac. c. 18. §. 4.
Conviction

These Overseers, or two of them, shall (or may) from Time to Time, or once every Month, at least, go into all or any Houses, Shops, or other Rooms of any Clothier, Draper, Cloth-worker, or other Person where such Cloth shall be, or shall be suspected to be, and there make due Search and Trial, &c. 39 Eliz. c. 20. and 21 Jac. c. 18. §. 5.
The Overseers Duty.

39 Eliz.
21 Jac. 18. Also the same Overseer shall fix on every Cloth (by them viewed) a Seal of Lead, containing the Length and the Weight of every such Cloth, together with this Word *Searched*; or *Faulty*, if there be Cause, and shall be viewed, searched, or weighed by none other, upon Pain to forfeit to the Party grieved five Pounds, to be recovered in the Quarter-Sessions.

P. 15. Also every Overseer of Cloth, appointed by any former Law (now in Force), to fix unto any Kind of Cloth a Seal of Lead, shall engrave or set upon every their Seals of Lead (which they shall fix upon any Cloth by them to be sealed) his Christian and Surname: And no Cloth to be sealed with any Seal of Lead which shall want such Ingravings or Print, shall be allowed to be sufficiently sealed. 21 Jac. c. 18.

Also the said Overseers shall seize and carry away as forfeit all such Cloth as upon their Search they shall find not to be sealed with a Seal, containing the just Length and Weight, and shall present the same Cloth to the Justices of Peace at the next Quarter-Session of the Peace. 39 Eliz. 20.

And if the said Overseers shall find any false Seal set upon any Cloth, or any Cloth to be stretched or strained, they shall present such Defaults at the said next Sessions, together with the Names of the Owners of such Cloths. *Ibid.*

But Cloth once lawfully searched, viewed, weighed, and sealed by the Overseers and Searchers of the Parish, Town, or Place, where the

said Cloths be made, shall not afterwards be viewed, searched, or weighed by any other Person or Officer whatsoever. 4 Jac. c. 2. and 21 Jac. c. 18.

And if the said Overseers shall find any such Tenters, Wrinches, or Engines (for the Stretching of Cloth) they shall deface the same; and for the second Offence therein, they shall take away the said Tenters, &c. and shall sell the same to the best Value thereof, and by the Consent of two Justices of Peace shall dispose the Money thereof to the Poor of that Parish. Vide 21 Jac. c. 18.

And if any Person, whose Tenters are defaced, shall offend with them a second Time, he shall forfeit five Pounds, forty Shillings to be to the Uses and in the Manner the five Pounds.

§ 6. If any Person, commanded by two Justices of Peace to appear to be made an Overseer according to this Statute, do (without reasonable Excuse) refuse to come and take upon him that Office, he shall forfeit for every such Refusal five Pounds, the one Half to the King, and the other Half to those two Justices: And shall remain in Ward to the Sheriff, until he hath paid the same Forfeiture, or put in Sureties for the same. 39 Eliz. c. 20.

The Money that shall be made upon the Sale of any Tenters, Wrinches, and other such Engines, shall be disposed (to the Poor of the Parish where the said Tenters, &c. shall be found) by the Consent of any two Justices of Peace within the same County. P. Drap. 118.

But by Statute 7 Jacobi, certain Cloths made within the County of Cumberland, Westmorland and Lancaster, shall not be subject to Search, &c. Also by the Statute of 3 Jac. c. 1, 7. Welsh Cottons shall not be searched, nor tried, neither need they have any Seal containing their Length or Weight. 7 Jac. 17.

§ 7. All Penalties and Forfeitures for Want of Length, Breadth, and Weight of Cloth, limited by any Statute now in Force, shall be distributed into three Parts equally; whereof one third Part shall be unto the Searchers, finding and certifying the same, &c. To be recovered by them, at, or in the Quarter-Sessions of the County, City, or Town Corporate, where the Offence is committed by Debt, Bill, Plaint, or Information. And the other two Parts shall be to the Poor of the Parish where the said Cloth shall be made: The said two Parts to be levied by Way of Distress, and Sale of the Offender's Goods, &c. upon a Warrant from two Justices of Peace, &c. 21 Jac. 18.

§ 8. And because by the Statute of 21 Jac. all Penalties and Forfeitures, for Want of Length, Breadth, and Weight of Cloths, are under the Power of Justices of Peace for their Direction therein, I shall set down the same as they are mentioned in the Statutes of 4 Jac. 2. and 25 Eliz. c. 17. and 5 Ed. 6. c. 6. and 4, 5 Ph. & Mar. cap. 5.

1. Broad Cloths, and Cloth of died Wool and mingled Colours, shall contain between 30 and 40 Yards, every Yard and Inch of the Standard, and no more; and in Breadth, 6 Quarters and a Half of a Yard within the List, and shall be in Weight 86 Pounds. 4 Jac. 2. 5, 6 Ed. 6. c. 6. 4, 5 Ph. & Mar. c. 5.

2. Long Worcesters, and Cloth of like Making between 30 and 33 Yards; and in Breadth 7 Quarters; and shall weigh 78 Pounds. Ibid.

3. Long coloured Cloths called Plankets, Azures, and Blues, and long white Cloths, and Cloths of like Make, be in Length between 29 and 32 Yards; and in Breadth, 6 Quarters and an Half, and weigh 86 Pounds. Ibid.

4. Short

- 4, 5 Ph. & Ma. c. 5. 4. Short Cloths coloured, and short white Cloths called *Sorting-Cloths*, in Length between 23 and 26 Yards; and in Breadth 6 Quarters within the List, and weigh 64 Pounds.
- Ibid. 5. White short Suffolk, or Cloth of the like Make, shall contain in Length between 23 and 26 Yards; and in Breadth 6 Quarters and a Half, and weigh 64 Pounds.
- Ibid. 6. Every white Cloth of like making, called *Handy-Warps*, shall contain between 29 and 32 such Yards in Length; and in Breadth 6 Quarters, and weigh 76 Pounds.
- Ibid. 6 R. 6. 35 El. c. 9. 7. Broad Plunkets, Azures, Blue, and other Cloth of like Make, shall contain in Length between 26 and 28 Yards, and in Breadth 7 Quarters and an Half, and weigh 68 Pounds.
- Ibid. 8. Short Cloths made of died or mingled Colours in *Yorkshire*, or of like Make, between 23 and 25 Yards in Length, and in Breadth 6 Quarters and a Half, and weigh 66 Pounds.
- Ibid. 27 Eliz. c. 17. 5, 6 Ed. 6. c. 1. 4, 5 Ph. & M. c. 5. Ibid. Ibid. 9. Broad-listed Whites and Reds, called *Sorting-Pack broad-listed Cloths*, in Length between 26 and 28 Yards, in Breadth 6 Quarters and a Half, and weigh 64 Pounds.
- Ibid. 10. Narrow-listed Whites and Reds, called *Sorting-Pack Cloths*, Length between 26 and 28 Yards, Breadth 6 Quarters and an Half, and weigh 66 Pounds.
- Ibid. 11. Fine Cloth with plain Lists, between 29 and 32 Yards, Breadth 6 Quarters and a Half, and weigh 72 Pounds.
- Ibid. 12. Cloths having *stup* Lists, and not plain Lists, Length between 30 and 33 Yards, Breadth 7 Quarters, and weigh 78 Pounds.
- Ibid. 13. Broad-Cloth called *Taunton's, Bridgwaters, and Dunsters*, between 12 and 13 Yards, Breadth 7 Quarters, and weigh 30 Pounds.
- Ibid. 14. Narrow Cloth of that Sort, Length between 24 and 25 Yards, Breadth one Yard, weigh 30 Pounds, the Half-cloth to be proportionable.
- Ibid. 15. All such Broad Cloths and Narrow Cloths, made into White and Red in *Yorkshire*; the Broad to hold the like Weight, Length, and Measure; but the Narrow to contain between 17 and 18 Yards of like Measure, Breadth and Weight, proportionable.
- 4 Jac. 2. 16. All *Devonshire* Kerfies called *Deffers*, Length between 12 and 13 Yards, Weight 13 lb.
- 35 El. 10. 17. *Check* Kerfies, strait and plain Greys, between 12 and 18 Yards, Breadth one Yard, Weight 24 lb.
- 4 Jac. 2. 18. Ordinary Pennistones or *Forrest Whites*, Length between 12 and 13 Yards, Breadth five Quarters and an Half, Weight 28 lb.
- 4 Jac. 2. 19. *Sorting Pennistones*, Length between 13 and 14 Yards, Breadth 6 Quarters and an Half, Weight 35 lb.
- 4 Jac. 2. 20. Kerfies called *Wasbers* or *Wasbwhites*, Length between 17 and 18 Yards half-thicked, and between 18 and 19 Yards quarter-thicked, Weight 17 lb.
- 4 Jac. 2. 21. If longer, than as before directed, the Seller to forfeit for every Yard and Inch, ten Shillings. If of less Weight, shall forfeit 10 s. for every Pound above two Pounds so wanting; and if failing in Breadth, to forfeit for every Cloth falling narrow throughout 20 s. half Way 10 s. a Quarter of it 5 s.
- 4 Jac. 2. 22. A Cloth found in the Party's Presence, or upon Notice in his Absence to be of lesser Length, than the Seal fixed imports, the Seller shall forfeit to the Buyer 6 s. 8 d. for every Yard wanting; and the Value of so much as is wanting.
23. Every

23. Every raw *Devonshire* Kersey, or Dozen, being a Rudys Wash 35 El. 10.
Kersey, shall in the Market weigh 17 Pounds raw, as it comes off the
Weaver's Loom, and without Racking, shall contain between 15
and 16 Yards; and if of less Weight or Measure, the Weaver shall
forfeit for every Quarter of a Pound twelve Pence; and for every
Quarter of a Yard twelve Pence.

24. Several Forfeitures by the Statute of 35 *Eliz.* 10. may be
sued for in any Court of Record, (as the Sessions, &c.)

25. Every Cotton shall weigh 21 *lb.* at least, and in Length 20 or 8 El. 12.
Yards, and in Breadth three Quarters of a Yard, or within one
half Nail thereof. Every Frize and Rugg shall weigh 44 *lb.* and in
Length between 35 and 37 Yards, and in Breadth, at most, 3 Quar-
ters, and, at least, within a Nail thereof; and if longer, it shall weigh
as it ought to weigh, proportionably, upon Pain, for every Yard,
not so weighing, twelve Pence; and if of less Weight, the Seller to
forfeit for every Pound under three Pounds, twelve Pence; and for
every Pound lacking above three Pounds 5 *s.* One half to the King,
the other Half to the Informer.

If any Person (which shall retail any of the Cloths, Kersies, Frizes,
Ruggs or Cottons, of the several Makings specified in the Statute 5
Ed. 6. c. 6.) do present any such woollen Cloth which is defective or
faulty unto the two Justices of Peace next adjoining, (out of a City,
Borough, or Town Corporate) where such Cloth shall be found faulty;
the same Justices shall cause the same Cloth to be cut into three equal
Pieces, whereof the King shall have one, the Presenter another, and
the Third the said Justices shall retain to themselves.

§ 9. And two Justices of Peace may take Order between the Clothier 7 Jac. 7.
Spinners, &c. imbe- zilling. and his Spinners, Carders, Kembers, Sorters, and Weavers, which
shall unjustly or deceitfully convey away, imbezel, sell, or detain any
Part of the Wool or Yarn delivered to them: And as well every such
Spinster, &c. so offending, as also the Buyers and Receivers, (know-
ing the same to be imbezilled) being thereof convicted by the Confes-
sion of the Party, or by one sufficient Witness upon Oath, before two
such Justices, shall give such Recompence to the Party grieved, for
such their Loss and Damage, as by the said Justices shall be ordered;
and if such Offender shall not be thought (in the Discretion of the said
Justices) able, or do not make Recompence according to such Order,
then such Offender is to be whipped, or set in the Stocks (in or near the
Place where the Offence was committed) at the Discretion of the said
Justices. For the second Offence he is to undergo the like, or such other Pu-
nishment of Whipping, or being put in the Stocks, as shall be thought fit.
And such two Justices have full Power to minister the Oath to such Wit-
nesses, and finally to hear, end, and determine the said Offences.

§ 10. Clothiers and other Masters that shall refuse to pay such Wages (to 1 Jac. 6.
Wages. their Spinners, Weavers, or other Workmen whatsoever) as shall be P. Just 66.
assessed at the Sessions by the Justices of Peace, and shall be thereof
convicted before any two Justices of Peace, (one being of the *Quorum*)
upon their own Confession, or upon Proof by two sufficient Witnesses,
shall forfeit for every such Offence ten Shillings to the Party grieved,
the same to be levied by Distress and Sale of the Offender's Goods, by
Warrant from the same Justices.

Linen Cloth. Two Justices of the Peace (one being of the *Quorum*) may take the 1 *Eliz.* 12.
Information of Stretching, or other deceitful using of Linen-Cloth, (by Rast. 249.
him that hath seised it) and of his Seizure thereof; and may bind the
said

said Seisor to give in Evidence, and to pursue the same Matter with Effect (at the next Session, &c.) And also to pay the Moiety of all that he shall recover, to the Use of the King's Majesty, &c.

' The Justices of Peace of the West-Riding of *York*, and others, are to be a Corporation, and to have a common Seal, and have Power to appoint Searchers of Cloth, and to make By-Laws, 14 *Car. 2. c. 32.* Such By-Laws, Rules, and Ordinances, as shall be made by the Warden and Assistants of Weavers in *Norwich*, touching the well making of *Norwich* Stuffs, shall be ratified, and confirmed by the Mayor, and two Justices of the City, and County of *Norfolk*, and three Justices of the County of *Norfolk* (*Quorum unus.*)

' The Power of the Justices of Peace of the Town of *Kidderminster*, in Execution of the Statute made 22 & 23 *Car. c. 3.* Touching *Kidderminster*-Stuffs. See that Statute. §. 11.

14 *Car. 2. c. 19.* ' No Foreign Wool-Cards, or Foreign Card-wire, or Iron-wire, for making of Wool-Cards, be imported into *England*, nor used there; §. 12. *Importing Wool-Cards.*
39 *Eliz. c. 14.* ' nor any Card-wire taken out of old Cards, be put into new Leather, or new Card-boards, nor such Wool-cards made thereof, be put to Sale, upon Pain, That every Person importing, or making, or putting to Sale, shall forfeit the same, or the Value thereof, if the same be not seised. A Moiety to the King, the other Moiety to him that shall first seise or sue by Action of Debt, Bill, Complaint, Information, or Indictment, in any of the King's Courts at *Westminster*, or in the County, City, Borough, or Town-Corporate, 14 *Car. 2. c. 19.* It seemeth by this Statute, that it may be prosecuted by Information or Indictment in the Sessions.

10 *Ann. cap. 16.* By the Statute 10 *Anna*, mix'd or medley Broad-cloth must be measured at the Fulling-Mill, after 'tis mill'd by the Master or Occupier of the Mill, who is first to make Oath before some neighbouring Justice, that he will truly perform such Measuring; the Justice is to give him a Certificate thereof, and then the Measurer is to set a Seal to each Cloth, with his Name stamped in Lead, mentioning in Letters the Length and Breadth, for which the Owner is to pay him one Penny; and the Number so stamp'd shall be a Rule of Payment to the Buyer.

If the Master of the Mill refuse or neglect to fix such Seal, or any Person shall afterwards take it off, or deface or alter the Figures before the Cloth is sold; and if the Buyer refuse to accept the same, according to such Measure, the Offender being convicted on Oath, forfeits 20*s.* but by the Statute 1 *Geo.* he forfeits 20*l.*

1 *Geo. cap. 17.* And by the same Statute the Master of the Fulling-mill refusing to make such Oath, forfeits 20*l.*

Clothier or Fuller, after such Cloth is fully wetted and stamped, shall not stretch a Cloth above one Yard in 20 Yards Length, or above one Nail in a Yard in Breadth, on Forfeiture of 20*s.*

Every Mill-man shall keep in his Mill a Table or Board, in Length 12 Foot, and in Breadth 3 Foot, on which the Cloth shall be creased and laid plain, and one Inch more instead of a Thumb's Breadth, (*viz.*) 37 Inches, to prevent any Dispute in respect of Measuring by the Yard.

Clothiers, or others concerned in the woollen Manufactures, shall pay in Money all Persons concerned in the said Work, and not imple or deliver any Goods or Ware for such Work, on Forfeiture of 20*s.* for every Offence.

Offences

Offences against this Act, are to be heard and determined by one Justice not concerned in the Matter of Complaint, and upon the Oath of one Witness; the Penalties are to be distributed, one Moiety to the Informer, and the other to the Poor of the Parish, &c. and the Offender refusing Payment for fourteen Days after Conviction, the Justice may grant his Warrant to levy it by Distress and Sale, &c. rendring the Overplus, &c. and if no Distress can be held, then to commit the Offender to the Gaol, or House of Correction, not exceeding three Months for one Offence; the Prosecution must be within 30 Days after 'tis done or discovered. But by the Statute 1 Geo. cap. 17. 'tis enlarged to 40 Days.

An Appeal lies to the Sessions.

Coals.

Coals.

THE Bowl Tub of *Newcastle* upon *Tine* for measuring of Coals, ^{30 Car. 2. c. 8.} is to contain twenty-two Gallons and a Pottle, *Winchester* Measure, and one and twenty such Bowls heap Measure, are allowed to a Chalder: The Contents of each Wain for Carriage of Coals there, shall be seven Bowls; and of each Cart, three Bowls and one Bushel heap Measure; and there such Wains, or six such Carts shall be allowed for a Chalder.

All Keels and other Boats, Carts and Wains for Carriage of Coals ^{ibid.} there, are to be measured and marked by Commissioners to be appointed by the King for that Purpose; and if they carry any Coals before they be measured and marked, they are forfeited together with the Coals laden upon them.

Forfeiture. Every Person having a Hand in removing or altering such Mark, ^{ibid.} upon Proof thereof by one Witness before a Justice of Peace, shall forfeit ten Pounds, to be levied by Distress and Sale of Goods, by Warrant of Such Justice, and for want of such Distress, to be committed to Gaol for three Months without Bail.

Coin. See *Felony*.

CHAP. XXV.

Common Prayer.

§. 1. Every Incumbent of a Benefice with Cure residing on his Benefice, and having a Curate, shall in Person (not having a lawful Impediment to be allowed of by the Ordinary) once in every Month openly read the Common Prayers and Service, and (if there be Occasion) administer the Sacraments and other Rites in the Parish-Church, or else forfeit 5*l.* to the Use of the Parish, upon Conviction by Confession or Proof of two Witnesses, before two Justices of Peace of the County, and if not paid within ten Days to be levied by the Church-wardens or Overseers, by Warrant of the said two Justices by Distress and Sale, rendring the Overplus.

§. 2. If any Person disabled by ^{14 Car. 2. c. 14.} To preach a Sermon or Lecture, shall during that Disability, preach a Sermon or ^{c. 14.} Lecture, he shall suffer three Months Imprisonment without Bail;

and two Justices of the Peace, or County, or Mayor, or Chief Magistrate of any City or Town Corporate, upon Certificate from the Ordinary shall commit him to the Gaol.

A Curate was indicted and convicted for refusing to Use the Common Prayer, and for depraving it; and Judgment given, that he should be deprived; but it was set aside, because a Temporal Judge cannot give Sentence of Deprivation; for 'tis a Spiritual Act. *Gouldsb.* 162.

C H A P. XXVI.

Coffee.

None shall sell or retail Coffee, Chocolate, Sherbet, or Tea without Licence obtained at the general Sessions of the County, or chief Magistrate of the Place; first, shewing a Certificate that he hath given good Security for Payment of his Duties of Excise to the King by Recognizance; for which Licence, Security and Recognizance he shall pay 12 *d.* and no more, upon Pain to forfeit 5 *l.* for every Month he shall retail without Licence. 15 *Car.* 2. 11.

Per Stat.
10 Geo.
cap. 10.

The several Duties on Coffee and Tea, granted by former Statutes, and made perpetual, shall be no longer payable.

2. No Chocolate ready made, or ready made Cocoa-Past, shall after 24 *June*, 1724. be imported on Pain of Forfeiting the same, and every Thing in which 'tis contained. *Chocolate.*

3. The new Duties are 2 *s.* per Pound on Coffee, 4 *s.* per Pound on Tea, and 1 *s.* 6 *d.* per Pound on Chocolate, to be paid by the Makers and Sellers.

4. The King or the Treasury may appoint Commissioners for the Receipt and Management of those Duties, the major Part of which Commissioners may substitute proper Officers requisite for such Purposes, which Commissioners and Officers shall have such Salaries as the Treasury shall appoint; and shall pay the Money arising out of such Duties distinctly into the Exchequer, from all other Branches of the Revenue.

5. All the Powers by any Law now in Force, relating to the Revenue of Excise on Beer, &c. shall be put in Execution for managing these Duties.

6. Every Person who shall be a Seller or Dealer in Coffee, Tea, or Cocoa-Nutts, or Maker, or Seller of Chocolate, shall make a true Entry in Writing, of the Places used for keeping or making the same.

Conformity.

10 Annæ,
cap. 2.

BY the Statute 10 *Annæ*, the Quarter-Sessions may take the Oath of Persons having Offices, and who have been convicted of Non-conformity, that they have conformed for a Year last past, and that they have received the Sacrament three Times in that Year.

Oath must be made of the Offence before one Justice, and within ten Days after 'tis committed, and the Prosecution must be within

M

3 Months

3 Months afterwards, and the Conviction is to be by Oath of two credible Witnesses.

CHAP. XXVII. *Vide XV.*

Corn.

- §. 1. **T**HE Certificate of one Justice of Peace (joined with the Customer of the Place) of the Unlading and Selling of Corn or Cattle, carried by Water from one Place to another of this Realm, unto the Customer and Controller of the Place where the same was embarked, is sufficient upon the Statute of *Forestalling*. See more of Corn, Tit. *Transportation*. 5 E. 6.
13 El. 25.
P. Forestal 6.
- §. 2. ' By the Statute of 1 and 2 P. and M. Stat. 2. c. 5. Corn could not be transported without Licence, unless it were under these Prices by the Quarter, Wheat 6s. 8d. Barley 4s. Rye 3s. and every Justice of Peace might inquire of it by the Statute of 13 El. 13. Certain Persons may determine when Corn shall be transported, when not, which they may afterwards alter, or the Justices of Peace in Sessions may alter till the Assizes; and the Queen by Proclamation may control all of them. See there the Poundage of Corn.
- ' By 1 Jac. 25. Corn may be transported, when of or under these Prices by the Quarter; Wheat twenty-six Shillings eight Pence, Rye, Pease and Beans fifteen Shillings, Barley or Malt fourteen Shillings. See there the Poundage.
- ' By 21 Jac. 28. It may be transported, when not exceeding these Prices by the Quarter; Wheat thirty-two Shillings, Rye twenty Shillings, Beans and Pease sixteen Shillings, Barley or Malt sixteen Shillings. See there the Poundage.
- ' By 3 Car. 4. It may be transported, not exceeding these Prices by the Quarter, viz. Wheat thirty-two Shillings, Rye twenty Shillings, Pease and Beans sixteen Shillings, Barley or Malt sixteen Shillings. See there the Poundage.
- ' By 12 Car. 2 c. 4. Corn may be transported, not exceeding these Prices, by the Quarter, viz. Wheat forty Shillings, Rye, Beans and Pease twenty-four Shillings, Barley and Malt twenty Shillings, Oats sixteen Shillings.
- ' By 15 Car. 2. c. 7. Corn not exceeding these Prices may be transported, viz. Wheat forty-eight Shillings, Barley or Malt twenty-eight Shillings, Buck-wheat twenty-eight Shillings, Oats thirteen Shillings four Pence, Rye thirty-two Shillings, Pease and Beans thirty-two Shillings. See there the Poundage.
- ' But by 22 Car. 2. Any Person, Native or Foreigner, may transport any Sort of Corn or Grain, although the same exceed the Prices mentioned, 15 Car. 2. c. 7. See the Poundage.
- ' Any Person allowed by three Justices of Peace, may buy Corn or Cattle to carry from one Port to another in this Realm, if the Market in forty Days, or as soon as the Weather will permit, and there unladen and sell the same, and bring a Certificate from one Justice of Peace, Mayor, or Bailiff, and of the Customer of the Port 5 E. 6. 14.

Port, of the Day and Place of the Unlading thereof, to the Customer of the Port where the same was laden.

1 Jac. 2.
c. 19.

The Justices of Peace at their Quarter-Sessions next after *Michaelmas* and *Easter* Yearly, by the Oaths of two substantial Persons of the respective Counties, being neither Merchants nor Factors for importing Corn, not interested in the Corn imported, and having a Freehold Estate of 20*l.* per Annum, or a Lease of 50*l.* per Annum above all Charges, &c. (which Oaths the Justices are impowered to administer) and by such ways as to them shall seem convenient, to examine the Prices of midling *English* Corn and Grain, as they shall be sold, and certify the same with two such Oaths made as aforesaid, in Writing annexed, unto his Majesty's Chief Officer or Collector of the Customs, residing in the respective Ports where such Corn shall be imported, to be hung up in the Custom-House for publick Information; and the Custom and Duty of all such Foreign Corn shall be collected according to the Price in such Certificate. Provided, that whatsoever is done by the Justices of Peace at their Quarter-Sessions in their several Counties, may be done in like Manner in *London*, in *October* and *April* Yearly, by the Mayor, Aldermen and Justices of the Peace there; the Persons making such Oaths being no Corn Chandlers, Mealmen, &c. but substantial House-keepers, qualified as before.

When Malt or Barley *Winchester*-Measure is 24*s.* per Quarter, or under, and Rye 32*s.* per Quarter, and Wheat 48*s.* per Quarter, any Person may Ship on an *English* Vessel whereof the Master and two Thirds of his Mariners are *Englishmen*, any Sort of Corn to transport, bringing a Certificate under his Hand to the Commissioners of the Customs of the Port, of the Quantity and Quality of such Corn, and upon Proof of such Certificate by the Oath of one Person, and a Bond of 200*l.* given by the Transporter for every hundred Tun so shipped, and so in Proportion, that the said Corn shall be exported, and not relanded in *England*, &c. such Transporter shall receive from the said Commissioners for every Quarter of Barley or Malt 2*s.* 6*d.* Rye 3*s.* 6*d.* and Wheat 5*s.* without paying any Custom, Fee, or Reward. 2 Will. 3. cap. 12.

Conies. See Game.

CHAP. XXVIII. Vide XVI.

Constables.

Constable, this Word is derived from two old Saxon Words, §. 1.
Cunning, or Kinning, which signifieth King, and Stable, Stability; shewing that these ancient Officers were reputed to be as the Stability or Stay of the King and Kingdom. Lamb. 5. Dodd. 73. Their Name.

Every Justice of Peace may cause two Constables to be chosen in each Hundred, Lamb. 190. this seemeth to be meant of the High Constables of Hundreds, and to include the Swearing of them; and this by Virtue of the Statute of *Winchester*, made 13 E. 1. and of the Commission, the first Assignavimus or Clause. §. 2. High Constables, how to be chosen.

And by the Statute of 34 H. 8. cap. 26. two Justices of Peace, the one being of the *Quorum*, may appoint the High Constables in *Wales*.

And yet the usual Manner is, that these High Constables of Hundreds are chosen either at the Quarter-Sessions of the Peace; or if out of the Sessions, then by the greater Number of the Justices of Peace of that Division where they dwell; and likewise that they be sworn either at the Sessions, or by Warrant from the Sessions; which Course hath also been often allowed and commended unto us by the Judges of Assize.

How to be removed.

Also in such Manner as they are to be chosen, in the same Manner, and by the like Authority they are to be removed; for *eodem modo, quo quid constituitur, dissolvitur*: So if there shall be Cause to remove an High Constable, it hath not been thought fit that one or two Justices of Peace should do it upon their Discretion, but that it should be done by the greater Part of the Justices of that Division, and that for some just Cause; or else that it be done at and in the General Sessions of the Peace; and so was the Direction of Sir John Doderidge at Summer Assizes at Cambridge, Anno Dom. 1620.

§. 3.
When first made.

By the Opinion of Master Lambert and others, the Constables of Hundreds were first appointed to be chosen by the said Statute of Winchester, tempore Ed. 1. And they were appointed for the Keeping of the Peace, and to view Armour, twice every Year, and to present before Justices, Defaults of Armour, of Watches, of Highways, and of Hue and Cry; and also all such as lodged Strangers for whom they would not answer. See Rastal. 379. c. d. Lamb. Duty of Const. 5. Minsh. verbo Constable.

§. 4.
Petty Constables.

Petty Constable (in Towns and Parishes) were after devised (for the Aid of the Constables of the Hundred,) viz. about the Beginning of the Reign of King Ed. 3. as it appeareth by M. Lambert in his Book of the Duty of Constables, pag. 9.

See Sta. 4
E. 3. cap.
3 & 10.

Hundreds when first made.

But it appeareth by Fineux 12 H. 7. fol. 18. a. that whereas the Sheriffs at the first had the Government of their Counties committed to them, afterwards, by Reason of the Multitude of People, and for that it was too great a Thing for one Person (sc. the Sheriff) to undertake, therefore Hundreds were divided and derived out of the Counties; and in every Hundred there was ordained a Conservator of the Peace, who was called the [High] Constable; and after, Boroughs or Towns were made, and within every of them also was ordained a Conservator of the Peace, who is called the Petty Constable, (and in some Places the Borough-Head:) and this was long before the Times that Mr. Lambert speaketh of, sc. long before King Ed. 1. or King E. 3. which also may appear by the Derivation of the Word Constable hic supra, and that they were in the Time of the Saxons: So that it may seem, that as well the High Constables as the Petty Constables, and their Authorities, were by the common Law; and that the old Statutes concerning them are but a Recital of the Ancient common Laws.

Deputy Constable.

The Authority which High Constables and Petty Constables have by the Common Law for keeping the Peace, see cap. 1. And the Constables Power to make a Deputy. Ibid.

Constables may make their Deputies, and such Deputies are within the Statute of 7 Jac. as was resolved in Felp's Case, M. 13 Jac. B. R.

Co. 5. 59.
Foster's
Case.

If a Justice of Peace make a general Warrant to bring a Man before him, or any other, &c. It is not at the Choice of the Delinquent, but of the Constable, before what Justice to carry him; but a Justice of Peace may make a Warrant to bring an Offender before himself, and it is good.

I have seen a MS. said to be a Collection of Sir Nicholas Hide's of the Office of a Justice of Peace; wherein is said, That it was resolved by all the Judges of England, Trin. 5 Car. 1. That Justices of Peace at Sessions may not compel the Constables of Hundreds to attend at the Quarter-Sessions, and to present Offenders upon Oath, otherwise it is at the Assizes, &c.

The Chusing and Swearing of these Petty Constables properly belongs to the Court-Leet: Yet we find it usual and warranted by common Experience, that every Justice of Peace doth also swear them, and upon just Cause doth and may also remove them. See the Title Warrants, cap. 121. § 5.
Petty Constables,
how chosen
and removed.

Ba. U. 5. 6. But in antient Time both the High Constable of Hundreds, as also Sheriff the Petty Constable of every Town, were yearly appointed by the Sheriff in his Torn, and were there sworn, and they may still be chosen or appointed, and sworn in the Sheriff's Torn, as well as in the Leet.

Constables lawfully chosen, if they shall refuse to be sworn, the Justice of Peace may bind them over to the Assizes or Sessions of the Peace. And for such his Contempt, he is there to be indicted, and thereupon fined and imprisoned. Dyer 29.

But he cannot commit them, until they will take on them the Office: For such a Commitment was adjudged void, M. 1652. And it was there resolved, that they could not chuse Constables, but might swear them, or if unfit Persons were chosen, might remove them.

Co. 8. 41. And here, for the better Chusing them, the Law requireth that every Constable be *Idoneus homo*, that is, apt and fit for the Execution of the said Office; and he is said in Law to be *Idoneus*, who hath these three Things, Honesty, Knowledge, and Ability. § 8.
Constables,
their Ability.

Honesty, to execute his Office truly, without Malice, Affection, or Partiality.

Knowledge to understand what he ought to do.

Ability, as well in Substance or Estate, as in Body, that so he may intend and execute his Office diligently, and not through Impotency of Body, or want, to neglect the Place.

For Constables chosen out of the meaner Sort, they are either ignorant what to do, or dare not do what they should, or are not able to spare the Time to execute this Office: They are therefore to be able Men, and to be chosen of the abler Sort of Parishioners; and are not to be chosen either by the House, or other Custom, but the Usage is otherwise.

Sid. 353.

Co. 8. 42. And if any shall be chosen Constable who is not thus inabled and qualified, he may by Law be discharged of his said Office, and another fit Man appointed in his Place. For the Duty of a Constable see Postea Tit. Warrant.

Leets chusing unable, or unfit Petty Constables, is Cause of Forfeiture of the Leet, and such Choice is void. And two Justices of Peace may remove such a Constable; or rather the Lord of the Leet would be dealt withal to chuse fitter Constables; and upon his Default, Complaint is to be made at the Assizes or Sessions of the Peace, from thence a Warrant to be granted to the Justices of Peace to chuse and swear others § 1.

thers more fit. And so was the Direction of the Judge of Assize at Cambridge, Anno 8 Caroli Regis.

1 December, 4 Car. William Stockdale elected Constable was discharged, for that his Dwelling was not convenient for the well Execution of the said Office. Ex libr. Sess. Middlef.

1. If a Constable die, or remove out of the Parish, his Place is to be supplied at the Leet, if that Time fall near; otherwise by the Sessions: But if that be too far off, then by the next Justices. Dyer 30.

2. If a poor weak Man be chosen a Constable, the Justices of the Peace must help this. Dyer 31.

3. A Man for his Quality otherwise fit to be a Constable, &c. procuring himself to be the King's Servant extraordinary, may notwithstanding be chosen a Constable, and may well perform his ordinary Service in the Country. Dyer 38.

4. Petty Constables conveying Rogues from Parish to Parish, for their Charges, see hic, cap. 47.

For the Duty of a Constable, see their Oath, hic, cap. 121.

Two Justices of the Peace may appoint and swear new Constables, 14 Car. 2. Headboroughs, &c. in Case of Death or Removal of such Officers out of the Parish. They to continue till the Lord hold a Leet, or until the next Sessions, who shall approve of them, or appoint others as they shall think fit. And if, in Default of holding Court-Leets, they continue above the Year, they may be discharged at the Sessions, and others put in. cap. 12.

Poor Rates.

And by the same Statute, Constables, Headboroughs, and Tithingmen out of Purse, with the Church-wardens and Overseers of the Poor, and other Inhabitants of the Parish, may make Rates upon all Occupiers of Lands, and Inhabitants, and all others chargeable by the Statute 42 El. to the Poor; which being confirmed under the Hands and Seals of two Justices of the Peace, may be levied by their Warrants, by Distress and Sale of the Refuser's Goods; for the Re-imbursing themselves their Charges in relieving, carrying with Passes, and in carrying Rogues, Vagabonds, and sturdy Beggars to the House of Correction.

Exempted.

Attornies, Clergymen, Justices of Peace, Infants, Lawyers, Physicians, poor and old Persons were exempted, but not Tenants in Ancient Demesne.

CHAP. XXIX.

Conspiracies.

§. 1. IF any Butchers, Brewers, Bakers, Poulterers, Cooks, Costermongers, or Fruiterers shall conspire, covenant, make Promise or Oath, not to sell their Victuals but at certain Prices; or if Artificers, Workmen, or Labourers, conspire, covenant, or promise, or make Oaths that they will not do their Work but at certain Prices, or Rates, or shall not work but at certain Hours and Times, or shall not take on them to finish what another hath begun, or shall do but a certain Work in a Day; such Person convicted by Witness, Confession, or otherwise, shall forfeit ten Pounds to the King, and if he have not sufficient

cient to pay, or do not pay it within six Days after Condition, shall have twenty Days Imprisonment, and shall only have Bread and Water. And for the second Offence shall forfeit twenty Pounds, and shall pay it within six Days, or else have the Pillory. And for the third Offence forfeit forty Pounds, and if he pay it not within six Days shall be set in the Pillory, and have one of his Ears cut off and be infamous.

2 E. 6. And if such Conspiracy be made in a Society, Company of any Craft, § 2.
c. 25. Mystery or Occupation of the Victuallers above-mentioned by the more
22 & 23 Part of them. Then over and besides the particular Punishment a-
Car. 2. bove-mentioned, the Corporation be dissolved. Justices of Peace,
The Stat. Mayors, &c. at their Sessions and Courts shall hear and determine the
is revived. Offences, and punish the Offenders.

Several Journeymen Tailors in Cambridge were indicted for a Conspiracy to raise their Wages, and being found guilty, they moved in Arrest of Judgment.

¶ That the Fact was laid in the Town of Cambridge, without setting forth in what County; and it shall never be intended, that the Town of Cambridge is within the County of Cambridge, because this is a criminal Case, wherein Intendments are never allowed.

Besides, this Indictment ought to conclude *contra formam Statuti*, because by the Statute 7 Geo. cap. 13. Journeymen Tailors are prohibited to enter into any Agreement for the Advancement of their Wages.

But adjudged, that the Fact being laid within the Town of Cambridge, it shall be intended, that the Town is within the County, and this in order to support all inferior Jurisdiction; and this being an Indictment for a Conspiracy, 'tis not material to conclude it *contra formam Statuti*, because Conspiracy is an Offence at Common Law. Mich. 1721. *The King versus Journeymen Tailors of Cambridge.*

CHAP. XXX.

Conventicles.

THE Stat. 17 Car. 2. cap. 2. apud Oxon. It is enacted, That all
Parsons, Vicars, Curates, Lecturers, and other Persons in Ho-
ly Orders, or pretended Holy Orders, or pretending to Holy Orders,
and all Stipendiaries, and other Persons who have been possessed of
any Ecclesiastical or Spiritual Promotion, and who have not decla-
red their Assent, and subscribed the Declaration mentioned in the
Act of 14 Car. 2. for Uniformity of publick Prayers, &c. and shall
not take and subscribe the Oath following:

§ 2.
By Stat.
1 Will. 3.
cap. 18.
§ 8. The
Preachers
or Teachers
of dissens-
ing Prote-
stants are
exempted
from the
Penalties
of this Act.

I A. B. do swear, That it is not lawful upon any Pretence what-
soever, to take Arms against the King: And that I do abhor that
traiterous Position of taking Arms by his Authority against his Per-
son, or against those that are commissioned by him, in Pursuance
of such Government either in Church or State.

And

And all such Persons who shall take upon them to Preach in any unlawful Assembly, Conventicle or Meeting, under Colour or Pretence of any Exercise of Religion, contrary to the Laws and Statutes of this Kingdom, shall not at any Time after the 24th of *March*, 1665. unless in passing upon the Road, come or be within five Miles of any City or Town Corporate, or Borough that sends Burgesses to the Parliament, within *England*, *Wales*, or Town of *Berwick* upon *Tweed*, or within five Miles of any Parish, Town or Place wherein he or they have, since the Act of Oblivion, been Parson, Vicar, Curate, Stipendary or Lecturer, or taken upon them to Preach in any unlawful Assembly, Conventicle or Meeting, under Colour or Pretence of any Exercise of Religion, contrary to the Laws and Statutes of this Kingdom, before he or they have taken and subscribed the said Oath before the Justices of the Peace at their Quarter-Sessions, to be holden at the Division next to the Corporation, City or Borough, Parish, Place, or Town, in open Court (which the said Justices are impowered to administer) upon Forfeiture for every such Offence of the Sum of forty Pound, one third Part thereof to his Majesty and his Successors, the other third Part to the Poor of the Parish where the Offence is committed, the other third Part to the Person that will sue for the same by Action of Debt, Plaint, Bill, or Information, in any Court of Record at *Westminster*, or before any Justices of Assize, Oyer and Terminer, or Gaol-delivery, Justices of the Counties Palatine of *Chester*, *Lancaster* or *Durham*, great Sessions in *Wales*, or Justices of the Peace in their Quarter-Sessions; no Essoin, Protection, or Wager of Law herein to be allowed.

It shall not be lawful for any Person or Persons restrained from coming to any City or Town Corporate, Borough, Parish, Town or Place, as aforesaid, or for any other Person or Persons who shall not first take and subscribe the said Oath, and shall not frequent Divine Service established by the Law of this Kingdom, and carry him or her self reverently there, to teach any publick or private School, or take any Boarders or Tablers to be taught or instructed by him or her self, or any other, upon Pain of Forfeiture of forty Pound for every Offence, to be recovered and distributed as aforesaid.

And any two Justices of the Peace in their respective County, upon Oath to them of any Offence against this Act, (which Oath they are impowered to administer) may commit the Offender for six Months without Bail; unless before such Commitment he shall be fore the said Justices of the Peace swear and subscribe the said Oath and Declaration.

Provided, That Appearance to any *Subpœna*, Warrant or Process, whereby personal Appearance is required, shall not be construed an Offence within this Act.

§ 3. There was an Act made 16 *Car. 2. c. 6.* Touching the Suppressing Seditious Conventicles, but the same being Temporary is expired, as by the same Act appeareth.

Nota, That Protestant Dissenters are exempted from the Penalties in this Act by Stat. 1 Will. 3. c. 18. § 4.

If any Subject of sixteen Years of Age shall be present at any Meeting under Pretence of Exercise of Religion in any Place, at which are present five Persons, besides those of the House, if it be in a House inhabited, or if in a House, Field, or Place where no Family is, then if above five Persons be present, any one or more Justices of that Liberty, or the Chief Magistrate upon Proof of the Offence by Confession, or two Witnesses, or notori-

ous

ous Evidence and Circumstance of the Fact, to make a Record, which shall be a Conviction, and to impose five Shillings a Fine on every Offender, which shall be certified at the Quarter-Session; and for the second Offence ten Shillings, which Fines shall be levied by Distress and Sale, and if poor, on any Person present at such Conventicle, and convicted at Discretion, so as such Sum to be levied on any other, exceed not ten Pound at one Meeting. 22 Car. 2. c. 1.

The Constable, Headborough, Tithingman, Church-warden, or Overseer to levy it by Warrant, under the Hand and Seal of such Justice, or Chief Magistrate, and to deliver it to the Justice, or Chief Magistrate, one Part to the King, so paid to the Sheriff, viz. to be delivered into Sessions, and they to deliver it to the Sheriff, and to make a Record of it, and to certify it into the Exchequer; another third Part to the Poor, and the other third Part to such Informer, or other Person as the Justices shall appoint, having respect to their Industry thereabouts. 22 Car. 2.

Every Preacher in such Conventicle shall forfeit twenty Pound to be levied by Distress and Sale, and if he be a Stranger, or unknown, or is fled, or cannot be found, or the Justices shall judge him unable to pay, the Justice may levy the same on the Goods of any Persons then present, to be disposed of as aforesaid. And for the second Offence the Preacher to forfeit forty Pound, to be levied and disposed of, as aforesaid. 22 Car. 2. *This doth not extend to a Protestant Dissenter. 1 W. c. 18. §. 8. The like.*

The Person that suffers such Conventicle in his House, &c. shall forfeit twenty Pound, to be levied and disposed of as aforesaid. No Person shall be liable to above ten Pound at any one Meeting in respect of the Poverty of any Person. 22 Car. cap. 1.

Where any Sum charged on such Offender exceeds ten Shillings, he may within a Week after it is levied, appeal in Writing to the Sessions, and leave it with the Justice, whether the Party convicting shall return the Money, and the whole Record and Evidence under Hand and Seal, to which the Appellant may plead, and it shall be tried by a Jury; and if he do not prosecute, or shall not be acquitted, or Judgment shall not pass for him, the Justices shall give treble Costs, and no other Court shall meddle with Appeals, and the Appellant is to enter into a Recognizance before the Person convicting to prosecute his Appeal, which shall be also certified to the Sessions. 22 Car. 2. cap. 1.

The Justices, or Constables, Tithingmen, and Headboroughs by Warrant from them, with what Aid they think fit, upon Refusal, enter the House or Place, and seize the Persons, and upon a Certificate under a Justice's Hand and Seal of his Information or Knowledge of a Conventicle, and that he cannot suppress it, any Commissioned Officer of the Militia, or other the King's Forces, and other Ministers of Justice with Soldiers or other Aid may prevent or dissipate them. But no Lord's House shall be searched, but by Warrant under the King's Sign manual, or in Presence of the Lord Lieutenant, or Deputy Lieutenant, or two Justices, *Quorum unus.* 22 Car. 2. cap. 1. *This doth not extend to Protestant Dissenters. 1 W. c. 18.*

Any Constable, &c. knowing of a Conventicle, and not giving Information, but they or any other being called, refusing to go in Aid of them, and thereof convicted in Form aforesaid, shall forfeit five Pound to be levied by Distress and Sale, and a Justice of Peace, or

Chief Magistrate neglecting his Duty, forfeits one hundred Pounds, one Moiety to the King, the other to the Informer by Action, &c.

22 Car. 2. cap. 1.

The Act shall be taken most strictly for suppressing Conventicles, and no Proceeding shall be revert for Form. 22 Car. 2. cap. 1.

If any Person convicted live in another County or Corporation, upon Certificate under Hand and Seal of the Person convicting to the Justices or Chief Magistrate, he or they shall levy the Penalty. 22 Car. 2. cap. 1.

The Party convicted being a Feme Covert, living with her Husband, Penalties shall be levied on him: Every Offender must be presented within three Months. 22 Car. 2. cap. 1.

Convicts. See Escape.

CHAP. XXXI.

Cottages, and Inmates. See Highways.

Building Cottages.

Continuing Inmates.

* This must be presented by the Jury upon their own Knowledge, or they must find Indictment upon an Evidence, and then and not before the Lord hath a Title to the Penalty.

NO Person shall make, build, or erect, or cause, &c. any Cottage for Habitation, or Dwelling, nor convert any Building to be used as a Cottage, unless he assign and lay to it 4 Acres of Land, being his Freehold and Inheritance, lying near it, to be continually used with it, upon Pain to forfeit to the King 10^l. Every Person that shall uphold or continue any such Cottage to be erected or convicted, shall forfeit 40^s. for every Month. There shall be no Inmate, or more Families, or Household, than one dwelling in any Cottage, made or to be made, upon Pain that the Owner, or Occupier wilfully suffering it, shall forfeit to the Lord of the Leet * 10^s. per mensem. 31 El. 7. See for the Exposition of this Statute 2 Just. 736.

The Statute shall not extend to Cottages in any City, Town Corporate, or ancient Burrough, or Market Town, nor to Cottages erected for Habitation of Workmen in Minerals, Cole-Mines, or Quarries of Stone, or about making of Brick, Lime, or Cole, so as the same be not above a Mile from the Work, nor to a Cottage within a Mile of the Sea, inhabited by a Sailer, nor to a Cottage for a Keeper or Warrener, nor to a Cottage heretofore erected and used for the Habitation of a Shepherd, or poor Person, so allowed to continue by the Sessions. 31 El. 7.

* Directed by his Steward to the Bailiff of the Manor.

The Justices of Peace in their Sessions (*inter alia*) may hear and determine Offences against that Act by Indictment, or by Presentment or Information, and to award Execution by * *Fieri facias*, *Elegit*, *Capias*, or otherwise as the Case shall require. 31 El. 7.

The Church-wardens and Overseers by Leave of the Lord in Writing, under the Hand and Seal of the Lord, or by Order of the Sessions with the Lords Leave, may erect Cottages for poor People. 43 El. 2.

C H A P. XXXII.

Counterfeiters.

^{33 H. 8. i.}
^{P. Just. 54} **T**WO Justices of Peace, the one being of the *Quorum*, may grant ^{Two Ju-}
their Warrant to attach and bind over to the next General ^{sions.}
Sessions of the Peace or Assizes, any Person that is suspected of any
deceitful getting into his Hands any Money, Goods, or other Thing
of any other Persons, by Means or Colour of any false Tokens or
counterfeit Letter made in another Man's Name, there to be exa-
mined and ordered. *Henry Jones* for a counterfeit Pass was adjudg-
ed to the Pillory, and fined: *Lib. Delib. Gaol. Newgate* 5 Dec. 8.
' *Car.* The like for counterfeiting a Butcher's Licence, 30 March.
' 7 *Car. eod. Lib.* Also the said Justices may call before themselves
' the Offenders, and after due Examination, &c. may imprison such
' Offenders, or bail them until the next General Session or Gaol-
Delivery. And in this Case the said Justices of Peace shall do well
to take Examination of the Offence, and to certify the same to the
said Sessions or Gaol-Delivery; and withal to bind over the Informers
and Witnesses to give Evidence therein.

One Justice of the Peace may bind such Offenders (as Cheaters) ^{Cheaters.}
to their Good Behaviour, and so to the next Assizes or Sessions of the
Peace, there to be examined and ordered; or else (by Force of the
' Statute 7 Jac. cap. 4.) may send such Offenders (as idle and disor-
' derly Persons) to the House of Correction, there to be continued
' until the next Assizes or Sessions, and then and there to be forth-
' coming, &c. yet *Quere* of sending them to the House of Correcti-
' on: And it seemeth more warrantable, if they be sent to the House
' of Correction by Order of the Sessions. *Richardus Freed* had Judg-
' ment to be set in the Pillory with a Paper written, *A common Cheater*
' *and Cousener*, and thence to be had to *Bridewel*, and kept at Work
' till he paid twenty Nobles for a Fine and put in Sureties for his Good
' Behaviour. *Lib. Delib. Gaol. Newgate*, 10 July 7 Jac. fol. 77.

' He that shall personate any Seamen, Souldier, Artificer or La-
' bourer in the Presence of his Majesty's Commissioners, or Officers,
' Pay-master, or Cashire, in Order to the Receiving any Money due
' from the King; the Principal Officer, and Commissioners may Arrest
' such Person, and imprison him until he shall find Bail to appear at
' the next Assizes or Sessions, and being there convicted, shall forfeit
' double the Value he would have gained, to the Governors of the
' Chest at *Charham* for the Use of the Poor and maimed Soldiers, and
' be imprisoned for a Time not exceeding one Year, at the Discretion
' of the Court. 22 & 23 Car. 2.

' He that shall Counterfeit the Hands of the Treasurer, Comptrol-
' ler, Surveyor, Clerk of the Acts, or Commissioners of the Navy, or
' of the Signing or Vouching Officers of his Majesty's Navy, Ships or
' Yards to any Bill, Ticket, or Papers, or shall knowingly produce
' such Counterfeit Ticket, Bill, or Paper; the Commissioners and
' Officers of the Navy may commit him to Prison, until he shall find
' Bail to appear at the next Assize or Sessions, there to be proceeded with
' according to Law. 22 & 23 Car. 2.

Or force-
ably Re-
scuing one
in Custody
for this Of-
fence.

'Tis Felony without Benefit of Clergy, for any Person knowingly to send any Letter to another with a fictitious Name, demanding any valuable Thing, *per Stat. 2 Geo.*

Challenge. See *Duel.*

C H A P. XXXIII.

Customs.

§. 1. **W**Here any Officers of the Customs are by any Person armed with a Club, or other Weapon forcibly hindred, affronted, abused, beaten, or wounded in the Execution of their Trusts and Services, either on Board a Vessel, or by Land or Water, the Person resisting, &c. Such Officers, or their Deputies, shall by the next Justice of Peace, or other Magistrate, be committed to Prison until the next Quarter-Sessions. 14 Car. 2. C. 11.

§. 2. If any Carman, Porter, Waterman, or other Person shall assist in the taking up, landing, shipping, or carrying away any Goods, Wares, or Merchandizes, either from the Shore outwards bound, or out of any Ship or Vessel arriving from Parts beyond the Sea, without a Warrant and Presence of one or more Officers of the Customs, the Person so offending, being apprehended by a Warrant from a Justice of Peace, and the same proved by the Oaths of two Witnesses, for the first Offence the Justice may commit him to Gaol, until he shall find Sureties for the Good Behaviour, for so long Time, until he shall be thereof discharged by the Lord Chancellor, Under-Treasurer, or Barons of the Exchequer. And for the second Offence, being so convicted, the Justice may commit him to Gaol for two Months without Bail, or until he shall pay the Sheriff five Pounds, or until he shall be discharged by the Lord Treasurer, Chancellor, Under-Treasurer, or Barons. 14 Car. 2. C. 11.

§. 3. **I**f any Person shall cause any Goods, for which Custom, Subsidy, or other Duties are due by Virtue of one Act of 12 Car. 2. c. 14. To be landed or conveyed away, without Entry first made, and the Customs, Collector, or his Deputy first agreed with, upon Oath made before (amongst others) the chief Magistrate of the Port, or Place where the Offence shall be committed, or the Place next adjoining, he may issue out a Warrant to any Person or Persons, enabling them, with the Assistance of a Sheriff, Justice of Peace, or Constable, to enter any House in the Day-time, where the Goods are suspected to be concealed, and in case of Resistance to break the House and seize the Goods; but no House shall be entred, but within a Month after the Offence committed; and if upon such Information a House be searched and prove false, the Party shall recover his full Damage and Costs against such Information, to continue until the End of the first Session of next Parliament. 12 Car. 2. c. 14. To C. 19

All Officers of the Customs in the Out-Ports, or elsewhere, shall before the 25th of March next take an Oath before two Justices of the Peace, that they will not receive any Reward or Gratuity other than their respective Salaries, or the regular Fees established by Law. And for neglecting or refusing to take the said Oath, shall forfeit their Office or Employment. 6 W. 3. c. 1.

The Persons administering the said Oath, shall certify the same to the next General Quarter-Sessions of the Peace, of the proper County, there to be recorded.

4 G. c. 11. By the Statute 4 Geo. Persons armed with Clubs, or any Manner of Weapon, and tumultuously met together in the Day-time, or in the Night, to the Number of eight or more, their Aiders and Assistants forcibly Hindring, Wounding, or Beating any Custom-house Officers in the due Execution of their Office, and being convicted thereof, shall be transported by the Order of the Court, and for such a Term of Years not exceeding seven Years, as the Court shall think fit, in the same Manner as Felons are transported.

And if the Person thus transported shall return into Great Britain or Ireland, before the Expiration of the said Term, he shall be a Felon without Benefit of Clergy. 6 Geo. cap. 21.

CHAP. XXXIV.

Custos Rotulorum, and Clerk of the Peace.

See Clerk of the Peace.

37 H. 8. 1. § 1. NO Person shall be appointed or assigned *Custos Rotulorum*, but such as have a Bill signed with the King's Hand for the same, which Bill signed shall be a sufficient Warrant for the Lord Chancellor, or Lord Keeper to grant a Commission to that Purpose, until the King in like Manner shall assign another.

37 H. 8. 1. § 2. Every *Custos Rotulorum* shall nominate and appoint every Person, who shall be Clerk of the Peace, and to grant such Offices to such able Persons instructed in the Laws, as shall be able to use the same, for the Time the *Custos Rotulorum* shall continue in his Office.

10 & 11 Will. 3. By the Statute 10 Will. 3. he is not to take any Thing of a Witness against a Felon, nor take more than 2 s. for drawing an Indictment against a Felon; the Forfeiture is 5 l. with full Costs.

And if he draws a defective Bill, he shall draw another without any Fee, under the like Forfeiture, to be recovered by him who will sue for the same in any Court of Record.

Dissenters.

Those who refuse to make and subscribe the Declaration 30 Car. 2. and to take the Oaths which came in the Room of the Oaths of Allegiance and Supremacy when tendered, are to enter into a Recognizance with two Sureties of 50 l. conditioned to procure a Certificate

under the Hands of Six of that Protestant Congregation (whereof the Refuser is one) or under the Hands of four Church of England Protestants, that he is a Protestant. 1 Will. 3. cap. 18.

10 Ann. cap. 18. One Justice may require a dissenting Minister preaching in a County where he is not qualified, according to the Act of Toleration, to take the Oath and Declaration of Allegiance and Fidelity.

1 Will. 3. cap. 2. He who disturbs a Protestant Dissenter, and being convicted at the Sessions by the Oath of two Witnesses, forfeits 20 l.

By

By this Act the Statutes 10 Anne, cap. 2. ad 12 Anne, cap. 7. ex- 5 Geo. 4.
cluding Dissenters from Offices, are repealed in Part; but Magistrates
knowingly or willingly being at Meetings with the *Insignia*, or Ha-
bit of Office, are dissolved.

Deer and Dogs. See Game.
Wounding or Beating any Custom-house Of-
ficer in the Execution of their Office, and being convicted there-
of, shall be transported by the Order of the Court, and for such a
Term, as the Court shall think fit.

CHAP. XXXV. Vide XVIII.

Dying.

One Just. Upon Information given to any Justice of Peace against any Person 29 El. 11.

Ususpected to offend this Statute concerning the Using of Log-
wood *alias* Blockwood, in Dying, such Justice may by his Warrant,
or other Commandment, cause to come before him, and may exa-
mine by Oath, or otherwise, the Servants or Workmen of such sus-
pected Offenders, and other Persons able to disclose the Offence: And
upon Finding the same, (*sc.* that any Person hath used, or caused to
be used in the Dying or Colouring of any Cloth, Wool, Yarn, Gro-
gram, Buffins, or Silk, or any Thing made of Woollen, Yarn, or Silk,
any Logwood, the said Justice shall bind with Sureties (to the next
Gaol-delivery, or Quarter-Sessions of that County) as well such sus-
pected Offenders, there to make Answer for the said Offence, as the
Examines which do discover the Offence; and shall also certify thi-
ther the said Examinations: And if such suspected Offender shall re-
fuse to be bound, then may such Justice send such suspected Person
to the next Gaol; there to remain till he or she shall become so bound
with Sureties. And the Justices of Peace, &c. may indict and con-
vict the Offenders, and set them in the Pillory, for such Time as
they shall think fit, and the Party shall forfeit 20 l. &c.

Two Just. Any two Justices of the Peace of the County where any Logwood
shall be found (in whose Hands soever it shall be) may cause the same
to be burned.

Drunkenness. Vide Tit. Alehouses.

CHAP. XXXVI. Vide XIX.

Egyptian.

§. 1. One Just. Every Justice of Peace, Sheriff, and Escheator, within one Month 22 H. 8. 10.
after their Arrival, may seize all Goods of any outlandish Per- Rast. 135.
sons calling themselves *Egyptians*, that shall come into this Realm,
and may also keep the one Moiety thereof to his own Use, making
account to the King in the Exchequer for the other Moiety. And eve-
ry Person that can prove by two credible Witnesses (before the said Ju-
stice or other Officer that so seisseth the said Goods) that any of those
Goods were craftily or feloniously taken from him, shall incontinently

be restored thereto (by the Party that so seisseth them) upon Pain of the double Value thereof to be forfeited by such Seisor to such Prover.

5 Eliz. 20. But note, That after the Month the Offence is made Felony by the Statute of 1 & 2 Ph. & Mar. cap. 4. and 5 Eliz. cap. 20. p. 2. And then it seemeth the King is to have the Goods wholly. And *Quare* whether the Statute of 22 H. 8. be still in Force, or be altered by the said Statutes of 1 & 2 Ph. & Ma. c. 4. and 5 Eliz. cap. 20.

Also note, That by the Statute of 1 & 2 Ph. & Ma. and 5 Eliz. the Word *Egyptian*, is now extended to such *counterfeit Rogues* and *Vagabonds*, as being *English* or *Welsh* People, do call themselves *Egyptians*; or do accompany themselves together, disguising themselves by their Apparel, Speech, Countenance, or other Behaviour, like unto *Egyptians*, or like unto such *Vagabonds* as call themselves, or are commonly called *Egyptians*. And so they are all Felons, or at least they are all incorrigible Rogues; therefore the Justice must send all such to the Gaol, and they are not bailable by Law, because they are all deemed Felons without Clergy.

Escape and Breaking Prison. See Chap. 139.

CHAP. XXXVII.

Estreats.

EVERY Clerk of the Peace shall deliver to the Sheriff within twenty Days after the 29th Day of September in every Year, a perfect Estreat of all Fines, Issues, Amerciaments, Recognizances, Monies and Forfeitures imposed, set, lost or forfeited in any Sessions of the Peace, before Michaelmas, by any Person due to his Majesty. 22 & 23 Car. 2.

And the said Clerk shall on or before every second Monday after the Morrow of *All-Souls*, deliver into the Exchequer a perfect Schedule of all such Estreats and Schedules by him delivered to the Sheriffs, on Pain to forfeit 5 *l.* one Moiety to the King, the other to the Informer, 22 & 23 Car. 2. 2. No Justice of Peace, or Clerk of the Peace, shall spare, discharge, or conceal any Indictment, Fine, Issue, Amerciament, forfeited Recognizance, or Forfeiture, set, lost, or forfeited, or Money paid in Satisfaction of Fine or Forfeiture under, by Order of Court, nor miscertify or estreat the same, whereby the Process of Exchequer may be made invalid, upon Pain to forfeit the treble Value thereof, one Moiety to the King, the other to the Informer. 22 & 23 Car. 2.

Where any Fine or Forfeiture shall be paid to any Clerk of the Peace, and be estreated into the Exchequer, the Summons or Process of Green-wax shall go to the Sheriffs against him. 22 & 23 Car. 2.

Quare, Where a Sheriff demands Money on the Green-wax, he ought to shew the same to the Party, and that which is paid shall be torted, or else he shall pay treble Damage to the Party, and be fined to the King, and the Party may bring his Suit before Justices of Peace. Stat. 42 E. 3. 9. Stat. 7 H. 4. 3 W. 2. c. 19.

Evidence against Felons. See Chap. 164.

CHAP.

C H A P. XXXVIII.

Excise.

- § 1. *Excise for Life.* BY Act of 12 Car. 2. c. 23. is settled upon the King for Life, ^{12 Car. 2. c. 23.} these Duties.
- By Stat. 1 G. c. this is granted to K. George for Life.
- For every Barrel of Beer or Ale, above 6 s. the Barrel, brewed by a common Brewer, or any other that doth sell Beer publickly or privately, 15 d.
 - For every Barrel of 6 s. or under 3 d.
 - For every Hogshead of Cider or Perry by the Retailer, 15 d.
 - For every Gallon of Metheglin by the Maker, to be sold, ob.
 - For every Barrel of Vinegar-Beer, brewed by a common Brewer, 6 d.
 - For every Gallon of strong Water, or *Aqua-vite*, by the Maker, 1 d.
 - For every Barrel of Beer or Ale imported from beyond the Sea, 3 s.
 - For every Tun of Cider or Perry imported, 5 s.
 - For every Gallon of Spirits, made of Cider or Wine imported, 2 d.
 - For every Gallon of Strong-water imported, perfectly made, 4 d.
 - For every Gallon of Coffee by the Maker, 4 d.
 - For every Gallon of Chocolate, Sherbet, and Tea, 8 d.
- By 12 Car. 2. Brandy is declared to be Strong-water within this Act.
- § 2. *Excise to the King and his Heirs.* The like Excise is given to the King and his Heirs by the Statute of ^{12 Car. 2. c. 24.} 12 Car. 2. c. 24. in Lieu of the Court of Wards and Liveries; and the Provisions of both Acts being the same in Substance, and for the most Part in Words are abridged as followeth:
- § 3. *Who shall pay it.* 1. The Excise of foreign Liquors shall be paid by the Merchant, Importer in Ready Money, and before Landing, and by 15 Car. 2. c. 11. there is a Penalty of the Forfeiture of the Goods.
- § 4. *Entries.* 2. All common Brewers once a Week, and all Retailers once a Month make Entries of what they shall brew or make in that Week, or Month, or else the Brewer to forfeit 5 l. Inn-keeper 5 l. other Retailer 20 s.
- § 5. *Payment.* 3. A common Brewer within a Week, and other Retailer within a Month after they make, or ought to make their Entry, shall pay the Duty, or pay double the Duty to be levied of their Goods.
- § 6. *Office.* 4. No Person living in a Market-Town, shall go out of that Town, or if he live out of a Town shall go farther than the next Market-Town on the Market-day.
- § 7. *Gaugers.* 5. The Commissioners and Sub-Commissioners in their Divisions may appoint Gaugers under Hand and Seal, which Gaugers may by Night or Day, if by Night in the Presence of a Constable, or other lawful Officer, upon Request, be permitted to enter any House or Place of Brewers and Retailers, and to take Account of such Liquors, and make Return to the Commissioners, or Sub-Commissioners, leaving a Copy of such Return with the Brewer, Maker, or Retailer, under his Hand, which Return shall be a Charge upon the Brewer, Maker, or Retailer; and if such Brewer, Maker, or Retailer shall refuse such Gauger Entry, or to gauge or take Account, the Gauger may forbid him to sell or carry out the same; and if he shall sell or carry out the same, not having paid the Duty, shall over and above the double Value pay five Pounds.

6. Every 36 Gallons of Beer, and 32 Gallons of Ale to be taken ^{§ 8.} by the Ale-quart, shall make a Gallon of Beer or Ale, and other Li- ^{Vessels.} quors by the Wine-quart.
7. No Brewer or Retailer shall upon Sale, take more than the ^{§ 9.} usual Prices, saving that common Brewers may take the Excise. ^{Prices.}
8. Every common Brewer shall out of twenty three Barrels of ^{§ 10.} Beer, be allowed one; and so out of twenty-two Barrels of Ale. ^{Allowance.}
9. Every common Brewer wittingly making a false Entry, and ^{False En-} convicted as by the Act is directed, shall forfeit as aforesaid; and so ^{try.} for six Months next following.
10. No Beer or Ale is to be delivered by the common Brewer to the Retailer, until the Duty be paid. If any brew only to sell in a Fair, and shall pay the Duty before Sale, he shall be discharged.
11. The Commissioners and Sub-Commissioners may compound ^{§ 11.} with the Brewer or Retailer, as may be for most Advantage of the ^{Composi-} Receipts thereof. ^{on.}
12. The Lord Treasurer or Commissioners of the Treasury, or such ^{§ 12.} as the King shall appoint, may let to Farm the Duty for three Years, ^{Farming.}
13. All Forfeitures and Offences, within the Limits of the chief Of- ^{§ 13.} fice in *London*, by the Commissioners or Governors of Excise, or the ^{Appeal.} Commissioners of Appeal, in case of Appeal. And in other Places, by two or more Justices of Peace, near the Place; and in Case of Neglect or Refusal of such Justice, within fourteen Days after Complaint and Notice to the Offender, then by the Sub-Commissioners; and if any Person find himself grieved with the Judgment of such Sub-Commissioners, he may appeal to the Quarter-Sessions, whose Judgment shall be final. Which Commissioners and Justices are required, upon Complaint, to summon the Party, and upon his Appearance or Contempt, to examine the Matter; and upon Conviction by Confession or Proof, by one or more Witnesses, to give Judgment, and to grant Warrants to levy by Sale of Goods; if not redeemed within fourteen Days, and for Want of Distress, to imprison until Satisfaction.
14. The Justices and Commissioners may mitigate such Forfei- ^{§ 14.} tures, but not below the double Duty, besides Costs and Charges of ^{Forfeiture.} such Officers, which the Justices shall allow them. Which Forfeitures (Charges deducted) the King shall have Three fourth Parts, and the Informer one.
15. There shall be a Head-Office in *London*, or ten Miles of it, ^{§ 15.} to which, all other Offices shall be subordinate and accountable, as ^{Head Of-} long as the King pleases, to be managed by such Persons as his Ma- ^{ice.} jesty shall appoint; and *London* and *Westminster*, and Places within the Limits of the Weekly Bills of Mortality, shall be within the Care of that Office; (and that the King shall appoint Commissioners and Sub-Commissioners in all other Places) which Office, in all Places where it is appointed, shall be kept open, from eight till twelve, and from two till five; and the chief Commissioners shall pay all Monies collected into his Majesty's Receipt of the *Exchequer*.
16. No Person shall be capable of such Office or Employment, re- ^{§ 16.} lating to the Excise, until he shall, before two Justices of the Peace ^{Oath.} take the Oaths of Allegiance and Supremacy, and this Oath.
- You shall swear to execute the Office of *truly and faithfully,*
without Favour or Affection, and shall from Time to Time true ac-
count make, and deliver to such Person and Persons as his Majesty
shall

shall appoint to receive the same, and shall take no Fee or Reward for the Execution of the said Office, from any Person than from his Majesty, or those whom his Majesty shall appoint in that Behalf.

Which Oath every Justice of Peace shall certify at the next Sessions, there to be recorded.

12. No Writ of *Certiorari* shall supersede Execution, or other Proceedings, upon any Order made by the Justices in Pursuance of this Act.

Thus far go these two Acts of Parliament; and 15 Car. 2. c. 11.

An explanatory Act was made as followeth.

§. 18.
Measures
altered.

First, No common Brewer or Retailer of Beer and Ale without Notice to the next Excise-Office, or to the Commissioners, Farmers, or Sub-Commissioners of that Division, erect, alter, or enlarge any Tun, Fat, Back, Cooler, or Copper, or Use them for Brewing; or shall use or make any private Store-house, Cellar, or Place, other than such as were then opened and used in his common and usual Brew-house, upon Pain to forfeit fifty Pounds. And every Person in whose Occupation the same shall be found shall forfeit fifty Pounds. And such Tun, Fat, Cooler, Back or Copper, with the Beer or Wort therein, may be seized and delivered to the Overseer of the Poor, to be sold for the Use of the Poor, and distributed amongst them.

§. 19.
Commissioners
nor
Farmers.

Secondly, No Commissioner for regulating the Excise, shall directly or indirectly farm it by Patent to himself, or any other in Trust; nor Farmer be capable of being a Commissioner: And if he act, shall lose the Benefit of his Farm, and be disabled to be Farmer or Commissioner; and all Acts made void; and Persons troubled, may bring their Actions.

§. 20.
Gauger.

Thirdly, Every Gauger shall weekly, after a common Brewer hath or ought to make his Entry, deliver to him, at his House or some of his Servants a Copy of his Return, or forfeit forty Shillings. And a Brewer, if he certify his Entry, or discharge the same within a Week after such Note delivered, shall not incur any Forfeiture.

Fourthly, Two able Gaugers in every City shall be appointed, one by the Commissioners, the other by the Brewers, and shall take an Oath before one Justice, to gauge all Tuns, Fats, Coppers, and Vessels; and deliver one Copy to the Commissioners, and another to each Brewer.

§. 21.
Officer no
Justice.

Fifthly, No Commissioner, Sub-Commissioner, Farmer of Excise, common Brewer, or Inn-keeper, shall act as a Justice of Peace; if he do, all Acts done by him are void.

§. 22.
Deputies
in Towns.

Sixthly, The Commissioners, Farmers, or Sub-Commissioners, shall under their Hand and Seal, depute some Person in each Market-Town, to be there every Market-day in some publick Place, to receive Entries; and the next Market-day it shall be published, who shall attend each Market-day from nine to twelve, and from two till five. And if such Office be not so attended, the Commissioners, Farmers, or Sub-Commissioners, for each Market-day forfeit ten Pounds, to be recovered by Action, one Moiety to the King, the other to the Informer: And the Person coming; and being able to prove a Tender by one Witness, shall be excused of all Penalties.

§. 23.
Delivery of
Beer.

Seventhly, No common Brewer shall deliver out Beer, without Notice to the Excise-Office, but between *Michaelmas* and our *Lady-day*, between Seven in the Morning and Five at Night; and between our *Lady-*

- ‘ *Lady day* and *Michaelmas*, from three in the Morning, till nine at Night, or else forfeit twenty Shillings for every Barrel.
- ‘ Eighthly, If a Brewer or Retailer shall, after any Accompt taken § 24. *Mixing.*
 ‘ by the Gagers, of the Quantity and Quality of Beer, Ale, or Wort,
 ‘ mix his small Beer with strong Beer or Ale, and shall deliver out,
 ‘ or retail the same without giving Notice to the Gagers, or shall
 ‘ hide or conceal his Beer or Ale from the Gagers, shall for every
 ‘ Barrel so mingled or concealed, forfeit twenty Shillings.
- ‘ Ninthly, The Utenfils or brewing Vessels whosoever they be, § 25. *Utenfils.*
 ‘ shall be liable to the Duty and Penalties; and the Duty and Pe-
 ‘ nalties may be levied thereof.
- ‘ Tenthly, If any Common-Brewer that is under a Composi- § 26. *Brewing for other.*
 ‘ tion, shall, during that time, suffer any Beer or Ale to be brewed
 ‘ in his House for another common Brewer, without first giving No-
 ‘ tice to the Commissioners, Farmers, or Sub-Commissioners of that
 ‘ Division, of how much is to be brewed, and the Quantity and Qua-
 ‘ lity thereof; and forthwith paying down the Duty: As well the
 ‘ Brewer by whom, as for whom, shall pay for every Barrel five
 ‘ Pounds; one Moiety to the King, the other Moiety to the Infor-
 ‘ mer, to be sued for in any Court of Record.
- ‘ Eleventhly, No Person shall give a Bribe, Money, Fee, or Re- § 27. *Bribe.*
 ‘ ward to any Gager or Officer, to make a false Report or Re-
 ‘ turn; no sworn Gager, or other Officer, shall so take upon Pain of
 ‘ each ten Pounds: And upon Proof by two Witnesses before two
 ‘ Justices by Warrant to levy of the Goods; for want of Goods, Im-
 ‘ prisonment for three Months.
- ‘ Twelfthly, No Appeal shall be admitted, unless the Appellant § 28. *Appeal.*
 ‘ lay down in the Hands of the Commissioners, or Sub-Commis-
 ‘ sioners, the single Duty of Excise, and give Security to the Com-
 ‘ missioners of Appeal or Justices, for the Fine and Penalty: And if
 ‘ the Judgment be reversed, the Commissioners shall restore the Du-
 ‘ ty, or so much thereof as shall be adjudged. And the Party, ori-
 ‘ ginally presented, shall pay double Costs; and if affirmed, the Par-
 ‘ ty appealing shall pay the Commissioners complained of like Costs.
- ‘ *Note*, The Words are not intelligible, but, as I conceive, some
 ‘ Mistake is in the Print; for, it seems, the Words should be prose-
 ‘ cuting for prosecuted, or some other Words to that Sense.
- ‘ Thirteenthly, Excise shall be paid for Vinegar-Beer, made to § 29. *Vinegar.*
 ‘ sell in any other Place, as well as in a common Brew-house.
- ‘ Fourteenthly, Colleges and Halls of Universities excepted; Colleges.
- ‘ Fifteenthly, All Differences, Appeals and Complaints, touching § 30. *County.*
 ‘ Excise, shall be determined in the proper County.
- ‘ Sixteenthly, No Officer of Excise shall take any Money, Fee, or § 31. *Receipts.*
 ‘ Reward, for any Bond, Note or Receipt, touching the Excise, if he
 ‘ do, shall pay for every Offence ten Shillings.
- ‘ Seventeenthly, The Justices, or any two of them, or chief Ma-
 ‘ gistrates in all Counties and Places, shall meet once a Month, or
 ‘ oftner, if Occasion be, to hear and adjudge Matters of Excise.
- ‘ Eighteenthly, One third Part of all Forfeitures (not thereby § 32. *Forfeitures.*
 ‘ disposed of) shall be to the King, another to the Poor, a third to
 ‘ the Informer: And all Fines and Forfeitures, for the Recovery
 ‘ whereof no Remedy is ordained by that Act, shall be recovered by
 ‘ Action of Debt, Bill, Plaint, or Information, in any Court of Re-
 ‘ cord in the County, City, or Corporation, where the Offence is

- committed; or by such other Ways and Means, and in such Manner as is by the said former Act ordained, 15 *Car. 2. c. 11.*
- § 33. *Time of Appeal.* Nineteenthly, In *London* no Appeal to be received, unless commenced within two Months after the Judgment; and in the County, within four Months after the Judgment.
- § 34. *Oath.* Twentiethly, No Commissioner, Farmer, Sub-Commissioner, or other Person, to be employed in the farming, collecting, or taking Accompts for the Duty of the Excise, shall take upon them that Office, or proceed in the Execution of that Employment, until they have taken the Oaths appointed by 12 *Car. 2. cap. 23.* As is appointed by that Act, and have entred his Certificate of taking the said Oaths with the Auditor of the Excise, under the Penalty of fifty Pounds the Month, if he shall neglect it.
- § 35. *Farmers.* By the Statute of 16 & 17 *Car. 2. cap. 4.* Farmers of Excise may put in Execution such Powers and Authorities, as Commissioners and Sub-Commissioners may do by 12 *Car. 2. c. 23.* & 15 *Car. 2. c. 11.* Except the judicial Part of hearing Differences, and mitigating Fines and Penalties.
- § 36. By an Act of 22 & 23 *Car. 2.* A Duty of Excise is laid upon Liquors for six Year, from 24 *June*, 1671. in these Proportions.
- For every Barrel of Beer and Ale brewed, to be sold above six ^{22 & 23} Shillings the Barrel, 9 *d.* *Car. 2.*
 - For every Barrel of six Shillings, or under, 3 *d.*
 - For every Hogshead of Cider and Perry, made and sold by Retail, to be paid by the Retailer, 1 *s.* 3 *d.*
 - For every Gallon of Mead by the Retail, *ob.*
 - For every Barrel of Vinegar-Beer, 6 *d.*
 - For every Gallon of Strong-Water, 1 *d.*
 - For every Barrel of Beer or Ale imported, 3 *s.*
 - For every Tun of Cider or Perry imported, 4 *l.*
 - For every Gallon of low Wine of the first Extraction made of Wine, Cider, or other Materials imported, 2 *d.*
 - For every Gallon of Coffee, 2 *d.*
 - For every Gallon of Chocolet, Sherbet and Tea, 8 *d.*
- § 37. Which Duty is thereby declared to be ordered in all things as in the former Act, with these Additions.
- § 38. *Waste.* 1. For Waste and Leakage in every twenty three Barrels of Beer shall be allowed three, and in twenty two Barrels of Ale shall be allowed two.
2. Penalties for all offences against this Act, shall be thus employed. One Moiety to the King, the other to the Informer; but the Penalties may be mitigated, as in former Acts.
- § 39. *Liquors imported.* 3. All Liquors imported, shall be first entred before landed, and Duties paid, and every Warrant for the landing shall be signed by the Collectors of Excise, before the same shall be put a-shore, or else it is forfeited, or the Value of it; one Moiety to the King, the other to the Informer.
4. No private Person shall lend his Vessels to be brewed in, in his House or elsewhere, upon Pain to forfeit fifty Pounds.
- § 40. *Mixing.* No Retailer of Beer shall after the Receipt thereof, from a common Brewer, mix Beer, Ale or Wort, of an extraordinary Strength with Small-Beer, in any Tub containing three Gallons, or more; and if he do, to forfeit for every Barrel double the Duty of Excise, to be heard before the Justices and Commissioners, and they

to summon Witnesses: And any Person refusing or neglecting to
testifie, to forfeit any Sum under forty Shillings, to be recovered
and disposed, as other Penalties by former Laws.

6. No Inn-keeper or Retailer to be troubled for selling at greater Prices than formerly, during this Act.

W.&M. As well Justices of Peace as Commissioners of Excise or Appeals *Excise.*
Sess. 1. c. have Power to hear and determine Complaints between the Brewers
24. and Gaugers.

No Commissioners, or other Persons employed about the Duty of *Excise*, shall receive from any Collectors, Surveyors, Gaugers, &c. any Fee or Reward upon Pain of forfeiting their Office, upon Proof by two or more credible Witnesses, before two of their Majesty's Justices of the Peace.

Ibid. Commissioners of Excise or Appeals, or Justices of Peace upon Complaint made to them, on Behalf of the Brewers, &c. of any Over-charge returned by the Gaugers, shall hear and determine the same, and examine Witnesses upon Oath, on both Sides.

Distillers, &c. upon Oath made before two Commissioners of Ex-
 cise, or Justices of the Peace, that any Brandy, &c. intended to be
 exported, was drawn from Drink brewed from malted Corn, and not
 mixed with any low Wines, or any other Spirits made from other
 Materials, and that the Duties of the same are entred and paid, and
 that the same are exported for Merchandize, may export such Spirits
 or Brandy; and upon Certificate from the Officers, &c. such Exporter
 shall be paid by the Commissioners of the Port 3 d. for every Gallon
 so shipp'd off.

The Authority given to Justices of the Peace by several Statutes concerning the Excise, extends to these Particulars following. viz.

To { Brandy.
Brewers.
Distillers.
Gagers.
Inn-Keepers & Victuallers. }

To { Low Wines.
Malt.
Mead, Metheglin.
Sweets & Vinegar-
Makers. }

Brandy.

8 Georgii.
cap. 21.
Sect. 11.

AND first as to Brandy; all Distillers, Dealers, Makers, or Sellers of *Brandy, Arrac, Rum, Strong-Waters* or *Spirits*, by Wholesale or Retail, are enjoined by the Statute 6 *Georgii*, to make true Entries in Writing of all Warchouses, Cellars, Rooms, Shops, Store-houses, or Vaults, which they use for keeping Brandy, &c. for Sale, which Entries are to be made at the next Excise-Office.

The Forfeiture is 20*l.* for every Warehouse, &c. found without making such Entry; to be sued for, recovered, and levied or mitigated, as any Forfeitures may be by any of the Laws of Excise; one Moiety to the King, the other to the Informer.

Ibid. Sec. 13.

No Brandy, &c. shall be brought into such Warehouse, &c. without Notice first given to an Officer of Excise, and without producing and leaving with him a Certificate, that the Duties of such Brandy have been paid, or that they were condemned as forfeited, or that they were Part of the Stock of some Importer, Distiller, or Maker who paid the Duty.

The

The Penalty is the Forfeiture of the Brandy, &c. so brought in, without Notice, or Certificate, together with the Cask and Vessel.

Any Distiller or Dealer in Brandy, hindering or refusing an Officer of Excise to enter into their Ware-houses, &c. to take an Account of Brandy, &c. or shall lett, hinder or obstruct Officers in executing the Powers given them by this Statute, shall forfeit 50*l.* for every Offence, to be sued for, levied, mitigated and divided as before. ^{Ibid. Sect. 14.}

No Brandy shall be sold, uttered, or exposed to Sale by Wholesale or Retail, but when the same shall be in one of the said Ware-houses, &c. and entered as before mentioned.

And no Brandy, &c. exceeding a Gallon, shall be removed or carried from one Place to another, either by Land or by Water, without a Permit or Certificate, from one of the Officers of Excise, on Penalty of forfeiting the Brandy so removed, together with the Vessel in which 'tis contained, ^{Ibid. Sect. 21.}

Persons who shall have in their Custody any Brandy above 63 Gallons, shall be accounted Sellers of Brandy, and subject to be surveyed by the Officers of Excise. ^{Ibid. Sect. 18.}

Justices of Peace residing near the Place where any Seizure of Brandy, &c. shall be made, and which hath clandestinely been imported, may summon the Person, in whose Possession it shall be found, to appear before them; and upon his Appearance, or in Case he makes Default after a Summons, the Justices may in a summary Way proceed to examine, and give Judgment to condemn the Brandy, and issue out their Warrant for Sale thereof, together with the Vessel; which Judgment shall be final, without any Appeal or Certiorari to be brought. ^{Ibid. Sect. 21.}

When Brandy is seized, and no Claim made in 20 Days, the Officers must, after the said 20 Days, give publick Notice by Proclamation the next Market-Day, of the Day and Place when and where the Justices will proceed to examine the Cause of such Seizure, and to give Judgment of Condemnation of the Brandy so seized, which Judgment shall be final, and not controuled by an Appeal or Certiorari. ^{Ibid. Sect. 21.}

But in both these last Cases, the Justices of Peace have no Jurisdiction within the Limits of the Excise-Office in London; nor in any Case where the Seizure is made for an unlawful Importation, and where the whole Quantity of Brandy, &c. at any Time seized, doth exceed 63 Gallons.

The Master or Purser of any Ship, suffering Brandy, &c. or other uncustomed or prohibited Goods, to be put out of his Vessel into any Hoy, Lighter, Boat or Bottoms to be laid on Land, if convicted, shall (besides the Forfeitures to which they are liable by any Law now in Being) suffer six Months Imprisonment, without Bail. ^{Sect. 31.}

Brewers.

By the Statute 15 Car. 2. any Justice of the Peace hath Power to administer an Oath to two able Artifts, to complete the Contents and Gage of all Brewing-Vessels. ^{15 Car. 2. Cap. 11. Sect. 7.}

And by the Statute 12 Car. 2. Brewers not making true Entries once every Week, forfeit 5*l.* And if they do not pay the Duty within a Week after Entry made at the Office of Excise, they forfeit 10*l.* to be levied by Distress, and Sale of their Goods, if not redeemed. ^{12 Car. 2. Cap. 23. 24. Willi. Cap. 24.}

ed within 14 Days after the Distress made; and for want of * Distress, then to be committed till Satisfaction made. * Upon the Warrant it must be returned, that there was no Distress, before another Warrant can issue to commit.

This Forfeiture may be mitigated by the two Justices, so as it be not less then double the Duty of Excise, besides Costs and Charge.

The Conviction must be before two Justices, and by one Witness or Confession of the Party; and the Prosecution must be within three Months after the Offence, and three Parts of the Forfeiture goes to the King, and one to the Informer, after Charges deducted.

Brewers not permitting Gagers to enter, and being forbid by Gagers to sell or deliver out any Liquor without paying the Duties, forfeit 5*l.* and 10*l.* more, over and above the double Value, to be levied, mitigated and divided, *ut supra*. And the Prosecution and Conviction must be as before.

Brewers making false Entries shall, over and above the said Penalties, forfeit their Allowance for their Waste and Leakage for six Months; the Prosecution and Conviction must be as before.

15 Car. 2. A Brewer or Retailer not giving Notice at the next Excise-Office
Cap. 11. of setting up, altering, or enlarging any Tun, Vat, Back, Cooler or
1 Willi. Copper, and using them; or keeping any private Store-house for lay-
Cap. 24. ing such Liquors in Casks, forfeits * 50*l.* for every Tun, Vat, &c. to be levied by Distress, and Sale of Goods, &c. and for want there-
of to be committed to the County-Goal for three Months.

The Conviction must be by two Witnesses, and the Informations must be brought in three Months, and Notice must be given within a Week after the Information is brought.

Any Person in whose Occupation the House is, where a concealed Tun, Vat, &c. shall be discovered, forfeits 50*l.* to be levied and divided, *ut supra*; and for want of a Distress, to be committed, *ut supra*; and the Tun, Vat, &c. together with the Beer, shall be seized and delivered to the Overseers of the Poor, to be sold for the Use of the Poor, or to be distributed amongst them.

The Prosecution and Conviction must be, *ut supra*; but before the Sale or Distribution, the Justices must make an Adjudication of this very Forfeiture.

Brewers delivering or carrying out Ale or Beer, before Notice, &c. unless between 3 in the Morning, and 9 in the Evening, from the 25th of March to the 29th of September; and between 5 in the Morning to 7 in the Evening, from the 29th of March, to the 25th of September, forfeit 20*s.* per Barrel, to be levied and employed, and the Party to be committed, *ut supra*.

The Prosecution and Conviction must be, *ut supra*.

Brewers converting small Beer into strong, by mixing it after the Gage is taken, without giving Notice to the Gager, or hiding or concealing Drink not gaged, forfeit 20*s.* per Barrel, to be levied and employed, and the Prosecution and Conviction to be, *ut supra*.

1 Willi. By the Statute 1. Willi. Brewers who neglect or refuse to shew
Cap. 24. Gagers, all the Beer, Ale or Worts of every Guile, are to have no
Sect. 10. Benefit of the Proviso in the Statute 15 Car. 2. concerning Mis-entries, and shall incur all the Penalties imposed by any former Acts.

7 Willi. Brewers or Victuallers cleansing before the whole Guile is brewed,
Cap. 30. forfeit 40*s.* per Barrel, to be recovered and employed, *ut supra*.

Sect. 21. And refusing Gager to enter, and to stay in the Brew-house to see
Sect. 22. the Guile brewed off, forfeit 20*l.* to be recover'd and employed, *ut supra*.

Carrying out any Drink, or after 'tis carried out, Mixing any small with strong upon the Dray, or in the Cellar of the Victualler, forfeits 5*l.* to be employed and levied, *ut supra*. Sect. 23.

Brewer, or any other, obstructing the Officer in searching for private Tun, Back, Cask, &c. forfeits 20*l.* to be recovered and employed, *ut supra*. Sect. 27.

Every common Brewer shall tell the Gager how much strong Beer or Ale he intends to make of a Guile, and how much small, before any Part of the Guile is removed; and upon Refusal of such Discovery, the Gager shall return the whole Guile to be strong; and besides the Brewer shall forfeit 20*s.* for every Barrel; and if after the Brewer hath declared how much is in the Guile, any Increase be made thereof, the Brewer forfeits 5*l. per* Barrel; and the Servant assisting him forfeits 20*s.* and if not able, shall be committed for three Months. 8 & 9 Willi. Cap. 18.

If such Increase is made by adding Ale or Beer of a former Brewing, the Brewer shall incur all the said Penalties, unless 'tis proved on Oath that it was done in the Presence of the Gager.

If it appears to the Gager, that the Quality of strong Beer or Ale remaining of a former, and added to a new Guile, hath been alter'd since it was brewed, he shall return all that is added to the new Drink, as if then brewed, and the Brewer shall pay the Duties accordingly.

No common Brewer shall keep a Pipe or Stop-Cock under Ground, or any private Convenience, by which Worts may be conveyed from one Vessel or Place to another: Penalty is 100*l.* for every Offence.

Gager, or Officer of Excise, may in the Presence of a Constable, after Request made, break up the Ground in the Day-time, or any Ground joining to the Brew-house, or any Wall, to search for such Pipes; and if none are found, the Gager shall make good the Damage. Any Person opposing the Gager in such Search forfeits 50*l.*

C H A P. XXXIX.

Extortion.

Fees for Arrest.

NO Sheriff, Under-Sheriff, and their Clerks, Coroners, Stewards of Franchises, Bailiffs, Keepers of Prison, or other Officers or Ministers, by Colour of their Office, shall take any other Thing by them, or by any other Person, to their Use and Profit, of any Person to be by them arrested or attached, nor of any other, for the permitting any Arrest or Attachment, or of any Person, to be arrested or attached for Fine, Fee, Suit of Prison, Mainprise, or shewing Ease or Favor to any Prisoner. but as followeth. Sheriff 20*d.* Bailiff 4*d.* Goaler 4*d.* 23 H. 6. 10.

Pannel.

No Sheriff, Under-Sheriff, Sheriff's Clerk, Steward, &c. or Coroner, shall take for making any Return, Pannel and Copy, but 4*d.* 23 H. 6. 10.

Fees for Warrant. Forfeitures.

The Sheriffs shall take no more than 4*d.* for making any Obligation, Warrant or Precept.

He that offends shall lose to the Party his treble Damages, and forty Pounds, *viz.* A Moiety to the King, and the other Moiety to the Informer. 23 H. 6. 10.

Justices of Peace have Power to enquire, hear and determine of
Office without special Commission.

Extortion is an Offence by the Common Law, and is punishable
by Fine and Imprisonment; and generally Fees shall not be taken
at the common Law: And where any are given by Statute, they
may not be increased or enlarged, and that not only in the Court
belonging to the Common Law, but in the Ecclesiastical Courts:
Concerning all which, how necessary it is that they be looked in-
to and moderated, any one may judge, who hath any Thing to
do in either Jurisdiction, who must needs see, if not feel, they
are much increased, to the great Oppression of Suiters, beyond the
most large Pretences and Demands of more sober Times.

For all which Extortions, Bills of Indictment will lie at the
Sessions of the Peace, as it is an Offence at common Law, and
where special Penalties are provided by Statutes; these must be
recovered in the Method and Courts, by such Acts directed.

And, where any Act is, either by the common Law or Statutes
appointed to be done by any publick Officer, he ought, in Virtue
of his Place, do what is so required without taking any Thing
therefore, unless by lawful and reasonable Usage, he hath a Fee
belonging to him, or by Statute any be given him.

A Justice of Peace was convicted of Extortion, and fined 100
Marks, and committed during the King's Pleasure, and bound to
his good Behaviour for a Year, and ordered to acknowledge his
Offence publickly at the next Assizes, to be held for the County
where he lived, and was turned out of the Commission of the
Peace.

CHAP. XL.

Felony. See *Felonies at Common Law.*
Cap. 143.

Every Justice of Peace (by Force of the Commission, the first
Assignamus) may cause fresh Suit, Hue and Cry, and Search
to be made by the Sheriff, Bailiffs, Constables and others, upon any
Robbery or Theft: And also may cause the Constables to arrest and
to imprison all such as shall be suspected to be Thieves, Murderers,
or Felons. *Lamb. 190.*

Also every Justice of Peace may and must take the Examination
of all such Felons, or Persons suspected for Felony, as shall be
brought before him. See *hic cap. 3.*

2. And must take Information against them (of those that bring
them) *sc.* of the Fact, and Circumstances of the Felony and Fact.

3. And must put in Writing such Examinations and Informations,
or so much thereof as shall be material to prove the Felony, and
must certify the same to the next general Goal-delivery.

4. And after such Examination and Information taken, then the
Justice must commit such Felons to the Goal, or may bail them, if

they beailable; but then there must be two Justices together, and the one of them of the *Quorum*. See *postea* Tit. *Bailment*.

5. And must bind over (by Recognizance) the Informers, to appear, and all such as do declare any Thing material to prove the Felony, and to give Evidence against the Felon, at the next general Gaol-delivery to be holden within the County, City, or Town-corporate, where Trial of the said Felony shall be. 2 *Ph. & Ma. cap.* 10. See *hic cap.* 3.

6. If such Informer be unable to travel, &c. then the Justice of Peace may take his Information upon Oath, and may certify the same, *ut supra*, &c. and may forbear to bind such Informer to appear personally before the Justices at the Gaol-delivery, &c.

Note, That in Case of Treason or Felony, the Party accused may require reasonable Time to answer any Interrogatories, and having answered, ought to have Copies of his Examination, if he desire it. Co. Instit. 2. Part. p. 51. The Cases of Just. Richil, 1 Hen. 4. And the Lord Carew, 16 Jac.

If the Justice of Peace shall not certify such Examinations and Informations to the next Gaol-delivery, or shall not certify their Bailment, or shall not bind over the Informers to appear, and to give Evidence against the Felon at the next general Gaol-delivery, as aforesaid, he shall be fined (for every such Default or Offence) at the Discretion of the Justices of Gaol-delivery. 1 & 2 & 3 *Ph. & Ma.*

52.
Petty
Larceny.

But yet if it be for *Petty Larceny*, or other small Felonies determinable at the Sessions, the Justices of Peace may bind over the Informers, and may certify the Examinations and Informations to the next Quarter-Sessions of the Peace: And this was the Advice and Direction of Sir David Williams Knight, (late one of the Justices of the King's Bench) at the Assizes at Cambridge. For, said he, it was not meet to keep poor Prisoners in the Goal for small Matters of Felony from one Assizes till another; and therefore he gave Order, that the Justices of Peace (at their general Session of the Peace) should try and deliver Offenders for small Felonies.

53.
Felony.

Besides, the Justices of Peace, as well by Virtue of their Commission, as also by Force of the Statutes of 18 *Edw.* 3. 2. 34 *Edw.* 3. 1. & 17 *Rich.* 2. 10. have Authority to proceed to the Delivery of Felons, and to hear and determine, and to give Judgment upon all Felonies, whereof any Person shall be indicted before them, and are not restrained by the Statutes of *Ph. & Ma.* but that they may proceed therein before the Coming of the Justices of Assize and Gaol-delivery, the Words of the Commission to that Purpose are, *Assignamus vos Justiciarios nostros ad Pacem, &c. Ac etiam ad inquirend. de omnibus & omnimodis Feloniis, &c. Et ad omnes, & singulas Felonias, &c. audiendum & terminandum; & ad delinquentes castigandum & puniendum. Vi. Plo. 485. b.*

Lawyers.

And for that Purpose also, the aforesaid Statutes of 28 *Ed.* 3. 34. *Ed.* 3. & 17 *Rich.* 2. have ordained, that some learned in the Laws shall be put into the Commission of the Peace in every County within this Realm.

Also there be divers Statutes which by special Words did ordain, that the Justices of Peace should have Authority at their General Quarter-Sessions, to enquire of, hear and determine certain Felonies. As the Statutes, 18 *Hen.* 6. 19. & 3 *H.* 8. 5. Soldiers departing without License.

1 *Ed.*

1 Ed. 4. 2. Felonies presented before Sheriffs in their Tourns or Law Days.

P. Just. 11.
P. Just. 32.
P. Just. 15.
P. Just. 74.
P. Mariners 6.
P. Robbery.

22 H. 8. 11. Cutting down of Powdick.

25 H. 8. 6. Against Buggery.

8 Eliz. 3. Transporting of Sheep.

39 Eliz. 4. & 1 Jac. 7. Incurrible Rogues.

39 Eliz. 17. Wandering Soldiers and Mariners.

43 Eliz. 13. Carrying Men forcibly out of *Cumberland, &c.*

So that the Justices of Peace at their Sessions, may safely proceed to try all Petty Larcenies and small Felonies, and such other Felonies whereto they are authorised by these last recited Statutes: And in such Cases also the Justices of Peace that shall take the Examination of such Felonies, may safely bind over the Informers, and certify the Examination and Informations to their next general Sessions of the Peace.

And for Petty Larcenies, and other Petty Felonies, after an Indictment preferred at the Quarter-Semons, if an *Ignoramus* be found by the great Enquest, here the said Sessions, in good Discretion, may deliver the Gaol of such Petty Felons; otherwise for all Homicides, Robbery, or other Felonies. *Dier 29.*

For in Cases of Murder, or other Homicide (by Misfortune, or Murder in his own Defence, or other Manner,) the Offenders by the Statute of *Glocester* (made 6 Ed. 1. cap. 9.) are to abide in Prison until the Justices of Gaol-Delivery shall come into the County to deliver the Gaol. And by the Statute of 4 Ed. 3. cap. 2. Two Justices of Peace might take Indictments, &c. But the Persons so indicted were to be delivered by the Justices of Gaol-Delivery.

But after by the Statutes of 18 Ed. 3. cap. 2. beforementioned, Justices of Peace were assigned to hear and determine Felonies, &c. and to inflict Punishment according to Law, and the Manner of the Deed. And by the Statute of 34 Ed. 3. cap. 1. Justices of Peace had Power given them to hear and determine, at the King's Suit, all Manner of Felonies done in the same County, according to Law, &c. And by the Statute of 17 Rich. 2. cap. 10. in every Commission of the Peace, two Men of Law (amongst others) are to this Purpose to be assigned, *scil.* to go and proceed to the Deliverance of Felonies as often as they shall think it expedient.

And yet there are some Felons which the Justices of Peace cannot try at all, neither can they inquire thereof, as Namely.

§. 3.
Felonies
not to be
dealt with by Justices of Peace

Lam. 529.
Crom. 56.

3 H. 7. c.
14.

* This is
High
Treason.
See postea.
3 H. 7. c.
14.

1. First, If any Man being the King's sworn Servant; (and his Name in the *Check-Roll* of his Household) under the Degree of a Lord, shall conspire with another to destroy the King's Majesty, or any Lord of this Realm; or any other sworn to the King's Council, or the Steward, Treasurer, or Comptroller of the King's House; every of these Offences are made Felony by the Statute made 3 Hen. 7. But such Offences are by the same Statute appointed to be tried by a Jury of the *Check-Roll* of the same Household, and before the Steward, Treasurer or Comptroller of the King's said House.

2. All Murders or Manslaughters, committed or done within any the King's Palaces or Houses, or within the Limits or Bounds thereof, or within any other House where his Majesty shall happen to be then abiding in his Royal Person, shall be inquired of, tried, heard, and determined before the Lord Steward for the Time Being, of the King's Household; and in his Absence, before the Treasurer and Comptroller

troller of the same Household, and the Steward of the *Marshalsea*, or two of them, &c. And such Trial to be by the Inquisition and Verdict of his Majesty's Household Servants in the *Check-Roll*, 33 Hen. 8. cap. 12.

Records
Imbezill'd.

3. Imbezilling of any Record, Writ, Return, Panel, Process, or Warrant of Attorney, in the *Chancery*, *Exchequer*, the one Bench, or the other, or in the Treasury, whereby any Judgment shall be reversed; every such Offence is made Felony in such imbezillor, Stealer, or Taker away, and in their Procurers, Counsellors, and Abettors, by the Statute of 8 H. 6. But such Offences are by the same Statute appointed to be tried by a Jury of twelve Men, whereof the one half to be of the Men (*scil.* of the Officers and Attornies) of the same * Courts, who shall be sworn before the Judges of the said * Courts, *scil.* of the one Bench, or of the other, to inquire of that Offence: And if they shall indict the Imbezillors of such Record, &c. they shall be arraigned thereupon before the same Judges, as in Cases of other Felonies. 8 H. 6. c. 12.
Co. 11. 34.
P. Fel. 18.

Records
rafed.

4. Rasing of any such Record is also Felony, within the said Statute of 8 H. 6. and to be tried as aforesaid. *Br. Coron.* 174.

Note, the *Entring of a false Will Nuncupative*, is not properly Forgery, but it must be of a Will in Writing. *Miller's Case*, 2 Jac. C. B. 2 R. 3 fol 10.

Forging a
Deed.

5. Forging any Deed or Writing sealed, or of any Court-Roll, Will or Acquittance, or to cause or assent to be made any such forged Writing, to publish or shew forth in Evidence any such forged Writing, knowing the same to be forged; if any Person being once lawfully convicted of any of the said Offences, shall afterward commit any the said Offences again, every such second Offence is made Felony by the Statute of 5 Eliz. But by the same Statute such Offences are to be inquired of, heard and determined, by and before Justices of Oyer and Terminer, and Justices of Assize.

Not Indict-
able at the
Sessions.

And therefore, whereas one *R. Smith* was indicted at the Sessions of the Peace in the County of *Oxford*, upon the said Statute of 5 Eliz. for forging of a false Deed; it was adjudged by the whole Court in the *King's Bench* 30 Eliz. that the same Indictment was not well taken: For though the Justices of Peace by their Commission have Power (of Oyer and Terminer) to hear and determine Felonies and Trespases, &c. and have in their said Commission an express Clause, *Ad audiendum & terminandum*, and so are Justices of Oyer and Terminer, yet it was resolved by the Court, that forasmuch as there is a Commission of Oyer and Terminer known distinctly by that Name, and the Commission of the Peace is known distinctly by another Name, the said Indictment taken before the Justices of the Peace at their Sessions, was not well taken; therefore it was quashed. El. c. 14.
2 Salk.
406, 680.
S. P.
Co. 9. 118.
Cro. 120.

The Reason of this last Case and Judgment seemeth to hold in the former Cases, and in all other like Cases, where any Statute doth specially give Authority to any other distinct Court, or to other Justices or Commissioners, (leaving out the Justices of Peace) to inquire of, hear, and determine, or to try Felons, &c. There the Justices of the Peace (at their Sessions) cannot inquire thereof, &c.

Servants
imbezilling
their Ma-
sters Goods.

6. Servants imbezilling or taking away the Goods of their deceased Master, the Executors of the Party deceased may have a Writ directed to the Sheriffs, to make Proclamation two Market-Days, that such Offenders shall appear in the *King's Bench* at a certain Day. And if such Writ be returned, that Proclamation was thereupon made accordingly, then, if the said Persons do not appear in the *King's Bench* at

the

the Day specified in the said Writ, they shall be attainted of Felony, by the Statute of 33 Hen. 6. So that such Offence beginneth first to the Felony upon their Default of Appearance in the *King's Bench* after Proclamation; of which Default the Justices of Peace cannot take Notice, because they have not before them the Record of such Default, or not appearing, &c. *Crompt. 56. Lamb. 529.*

But in the former Cases, if such Offender shall be brought before any Justice of Peace, and charged with any such Felony; *Quere*, what he is to do therein, considering the Justices of Peace are no Judges of such Felonies; neither have they any Jurisdiction given them by the Statutes in such Cases: And yet for that, they are by their Commission authorised to deal with all Felonies, as also with all Offences against the Peace of the King and Realm, of which Sort all these last recited Offences are. *Quere*, If the Justice of Peace shall not do well to examine the Offence, and then to certify his Examination to such Persons as by the Statute are made Judges of the Cause; and also to commit such an Offender to Prison, to bind over the Informer, and to take their Information upon Oath.

Again, If a Man had been feloniously stricken in one County, and after died thereof in another County, (by the Common Law) no Indictment could be taken in either of the said two Counties, for that the Jurors of the County where such Party died (of such Stroke) could not take Knowledge thereof, (being in a Foreign County,) nor the Jurors of the County, where the Stroke was given, could not take Knowledge of the Death in another County. But now by the Statute of 2 & 3 Edw. 6. an Indictment thereof found by Jurors of the County where the Death shall happen (whether it shall be found before the Coroner, or before Justices of Peace, or other Justices, &c.) shall be good and effectual in Law: And that the Justices of Gaol-Delivery, and Oyer and Terminer in the same County, where such Indictment shall be taken, shall and may proceed upon the same, as if such Stroke and Death had been in one and the same County.

Also where Felons had robbed or stolen Goods in one County, and after conveyed Goods so stolen, into another County, to their Adherents there, who knowing of such Felony, received the same Goods. In this Case, although the Principal were after attainted, the Accessary notwithstanding escaped by Reason that he was Accessary in another County, and that the Jurors of the said other County (by the Common Law) could take no Knowledge of the principal Felony in the first County. But now by the said Statute, 2 & 3 Edw. 6. It is enacted, that where any Murder or Felony shall be committed and done in one County, and other Persons shall be Accessary (in any Accessary Manner) to any such Murder or Felony in any other County, that an Indictment thereof found or taken against such Accessary before the Justice of Peace, or other Justices, &c. in the County where such Offence of Accessary shall be committed, shall be good and effectual in Law; and that the Justices of Gaol-Delivery, or Oyer and Terminer, of or in such County where the Offence of any such Accessary shall be committed, shall write to the *Custos Rotulorum* where such Principal shall be attainted or convicted, to certify them whether such Principal be attainted; convicted, or otherwise discharged of such Felony; and thereupon the *Custos Rotulorum* shall make Certificate in writing under his Seal to the said Justices accordingly: And then the Justices of Gaol-Delivery, or Oyer and Terminer, shall proceed upon every such Accessary in the County where such Accessary became Accessary;

*§. 4.
Wound in
one County
Death in
another.*

*§. 5.
Stealing in
Robbing in
one County
and Flying
into another.*

33 Hen. 6.
c. 1.
Rast. pl.
fo. 592.

Co. Infit.
3 part. p.
135.
Rast. pl. 5.

Co. 9. 117.

Accessory, as if both the principal Offender and Accessary had been committed and done in the said County where the Offence of Accessary was committed.

So as by the Letter of this last recited Statute, the Jurisdiction over those Felons, and over such Accessaries, is not committed to the *Justices of Peace*, to proceed to the Trial of them; but this Authority is remitted to the Justices of Gaol-Delivery, or of *Oyer and Terminer*: Yet the Justices of Peace may examine these Offences, and take Information against the Offenders, and certifie the same to the next General Gaol-Delivery, and may bind over the Informers, and commit the Offenders: Also the Justices of Peace may inquire thereof, and take Indictments against them, as in other Cases of Felony.

§. 5.

8. Lastly, the Justices of Peace (at their Sessions) cannot try such as are indicted of Felony before *Coroners*, or before the Justices of Gaol-Delivery, or of *Oyer and Terminer*, unless the same Persons (*scil.* the said Coroner, Justices of Gaol-Delivery, or of *Oyer and Terminer*) were also Justices of the Peace in the same County, so as the Indictment may be understood to be taken by them, as before Justices of the Peace. For the Commission of the Peace, and the Authority of Justices of the Peace, extendeth only to try such as stand indicted before themselves, or before former Justices of the Peace, or before the Sheriff in his Tourn, or the *Steward in a Leet*, See *Lamb.* 486. & *Stat.* 1. *Ed.* 4. c. 2. & *Stamf.* 87. for Indictments taken in the Sheriffs Tourn. And for Indictments taken in Leets, see *Br. Tit. Leet.* 1. And yet by the Book 8 H. 4. fol. 18. it seemeth, that Indictments or Presentments of Felony taken in the Leet shall be delivered over to the Justices of Gaol-Delivery. *Br. Frank.* 5. Also in some Cases of *Treason and Misprision of Treason*, the Justices of Peace may inquire, and take Indictments, but cannot proceed to Trial, or to hear and determine the same. Lam. 530.

§. 6.
Treason.

As of *Maintainers of the Authority of the Bishop or See of Rome*, *Eliz.* 1. and of their Procurers and Maintainers, &c. the Justices of Peace in their Quarter-Sessions may inquire of such Offences; but they must certifie every Presentment thereof made before them into the *King's Bench* (within forty Days, upon Forfeiture of an hundred Pounds by every Justice of Peace there present, not making Certificate accordingly) *5 Eliz. cap.* 1.

2. So of such as shall obtain from Rome, &c. any *Bulls or Absolutions*; or shall publish, or put in Ure any such Bull; or shall give or take *Absolution* by Colour of any such Bull. 13 Eliz. 2.
23 Eliz. 1.

And their Procurers and Maintainers, &c.

And the Concealers of such Bull or Absolution offered to them.

3. So of such as shall withdraw any Subject from the Religion now used to the *Romish Religion*; or from their Obedience to the King's Majesty, or to the Obedience of the Pope, &c. 23 Eliz. 1.

And of such as shall be so withdrawn.

And of their Procurers and Maintainers, &c.

And of the Concealers of such Offences.

4. So of such as shall bring in this Realm any *Agnus Dei*, or other *Superstitious Pictures, or Beads*; or shall deliver, or offer any such to any Subject. 13 Eliz. 2.
21 Eliz. 1.

And of the Receivers of such *Superstitious Things*.

For

For all these last recited Offences against the Statutes of 5 Eliz. 1. 13 Eliz. 2. and 23 Eliz. 1. see more fully *postea* Tit. *High Treason*.

And if any such Offender against any of these last mentioned Statutes shall be brought before any Justice of Peace, and charged with any such Offence, the Justices must take the Examination of such Offenders, and bind over the Accusers and Informers to appear (and to prefer a Bill of Indictment, and thereupon to give Evidence to the Inquirors against such Offenders) at the next Quarter-Sessions, or rather at the next Assizes, or General Gaol-delivery, or else in the *King's Bench*, whensoever (upon reasonable Warning) they shall be thither called; and then to commit the Offender to the Gaol; and after to certify the said Examinations, Informations, and Recognizances (by him taken) to the said Sessions of Gaol-delivery, or into the *King's Bench*, &c.

In other Cases of *High Treason*, or *Misprision of Treason*, what the Justices of Peace, out of their Sessions, shall do with such Offenders brought before them, see *postea* Tit. *Misprision*.

But now to return to the Business of the Justices of Peace out of their Sessions.

If one shall bring a Man, suspected of Felony, before any Justice of Peace, but *refuseth to be bound to give Evidence* against the Prisoner (either at the General Gaol-delivery, or Quarter-Sessions, as the Case shall require;) if such Bringer hath given Evidence before the said Justice against the Prisoner, or can declare any Thing material to prove the Felony, and will not be bound to give Evidence upon his Trial, the Justice of Peace (upon his Discretion) may commit to Prison such Person so refusing, or may bind him to his Good Behaviour, *and to appear at the next Gaol-delivery or Quarter-Sessions*. But if the Bringer of a Person suspected of Felony cannot declare any Thing material to prove the Felony, nor any other Person then present, it seemeth the Justice ought not to commit the Prisoner: And so was the Direction of Sir *David Williams* at the Assizes of *Cambridge* aforesaid. Yet the Justices shall do well to *examine the Prisoner*, and if he shall not confess the Felony, then to commit him; or if upon his Examination there shall appear any just Cause of Suspicion, or if the Prisoner be a Man of evil Fame, and that there be a Felony committed. In these Cases, the Justice shall do well not to let him go, but at least to bind him over to the next Gaol-delivery, and in the mean Time to take farther Information against him. See the other Title *Felony*, *postea*, cap. 160.

As to the Value of the Goods stolen, it must be above 1 s. for if under 'tis not Felony but *Petty Larceny*, but Stealing several Things at several Times, which in the Whole amount to the Value of 1 s. or more, is Felony; so if Two or more steal together above that Value, 'tis Felony in all of them; but the Jury may find under that Value, and then 'tis *Petit Larceny*.

22 & 23
Cap. 2.
cap. 7. 'Tis Felony maliciously to *burn*, or *cause in the Night-time* to be burnt or destroyed, any *Ricks* or *Stacks of Corn*, *Hay*, or *Grain*, *Barn*, or other Houses or Buildings, or *Kilns*, or to kill or destroy any Horses, Sheep, or other Cattle.

The Offender shall be transported, and if he return within seven Years, he shall suffer Death as a Felon.

But this Conviction works no Corruption of Blood, Loss of Dower, or Disinheriting the Heir.

Carrier
who hath
a lawful
Possession.
See hic
postea.

A Man may be guilty of Felony in stealing Goods, *tho' he came lawfully to the Possession thereof*, as if a Trunk is delivered to a Carrier, directed to a certain Person to be carried to a certain Place, and he carries it to another Place, and there breaks it open and takes away the Goods, this is Felony.

Servant.

So 'tis where a Shepherd steals Sheep out of a Flock which he was to look after, or a Butler stealing Plate delivered to his Care, for he being a Servant, hath neither a general or special Property in it, for that remains still in his Master.

Where Goods were delivered to B. B. and stolen from him by T. S. 'tis Felony, for which B. B. may maintain an Indictment.

Husband
and Wife.

Where the Wife steals Goods with her Husband, or by his Compulsion or Command, 'tis not Felony; but if she receives stolen Goods, knowing them to be stole, and her Husband doth not know it, 'tis Felony in her.

Infant.

If an Infant, before he is of Age of Discretion, steal Goods, 'tis not Felony.

Felony, *tho'*
the Party
had a law-
ful Posses-
sion.

He who comes into a Fair or Market, or Shop, and cheapens Goods, as if he cheapens an Horse, and the Owner gives him Leave to ride to try his Paces, and he rides away, this is Felony.

Delivering Goods to a Workman to manufacture, and afterwards he steals them, this is Felony notwithstanding the Delivery, because the Property still remained in the Deliverer, and the Workman had only the Possession to a particular Purpose, (*viz.*) to manufacture.

Felony by
other Acts.
Taking out
Execution,
&c.

'Taking out Execution upon a Judgment in Ejectment, where the Party had no Colour of Title, and Breaking open the House and Taking away Goods, Felony; for 'tis *in fraudem Legis*; this was *Farr's Case*, who was convicted and executed. *Sid.* 254.

Breaking
down a
Copper, &c.

Breaking down a Copper fixed to a Freehold and carrying it away at the same Time, no Felony. *Kelynge* 29.

Breaking a
House in
the Day-
time.

Breaking a Dwelling-house in the Day-time, and taking and removing Goods from one Room to another, Felony; for by the Taking he had the Possession, and this was Stealing, and by Consequence Felony.

Guest in
an Inn.

A Guest in a common Inn rising in the Night-time, and carrying Goods out of his Chamber into another Room, and from thence to the Stable, intending to ride away with them, Felony.

Stealing
Goods
which he
had by
Contract.

By a late Act of Parliament it was enacted, that the Stealing Goods, ^{3 & 4 W. 3. cap. 9.} which by any Contract or Agreement between him and the Owner he is to use, or which is let to him to use in Lodgings, Felony.

Forging
Stamps.

Forging Stamps on Indentures denoting the Duties on the Money ^{8 Ann. cap. 9.} for putting out Apprentices, Felony without Benefit of Clergy.

Spoiling
Clothes.

Tearing, burning, cutting, defacing, or spoiling Clothes or Garments in the Streets, Felony, and Transportation for seven Years. ^{6 Geo. cap. 23.}

Stealing
out of a
Coach-
house.

Stealing Goods out of a Coach-house, tho' not broke open, to the Value of 5 s. or Assisting in it by Night or Day, Felony. ^{10 & 11 Will. 3. cap. 23.}

Coin.

Blanching Copper for Sale, or mixing blanch'd Copper with Silver, ^{8 & 9 Will. 3. cap. 26.} or knowingly Buying or Selling, or offering to sell it, or Buying or Selling any malleable Composition or Mixture of Metals or Minerals which shall be heavier than Silver, and look and wear like standard Gold, but be manifestly worse than Standard, or receiving, paying, and putting off any counterfeit milled Money, or mill'd Money un-
law-

lawfully diminished and not cut in Pieces, at a lower Rate than the same by its Denomination shall import, Felony; but without Corruption of Blood or Loss of Dower; the Prosecution must be within three Months after the Offence committed.

This Act was at first temporary, (*viz.*) to continue to the End of the next Sessions of Parliament, and continued by the Statute 1 *Ann.* cap. 9. and afterwards by the Statute 7 *Anna*, cap. 25. it was made perpetual.

Robbing one to the Value of a Penny is Felony, if the Party is *Robbery, put in fear.*

So if T. S. is threatened to be murdered, unless he will swear to bring such a Sum to J. L. at such a Place, which he brings accordingly, this is Robbery.

10 & 11
Will. 3.
cap. 23.

He who apprehends a Felon stealing to the Value of 5 s. out of a *Coach-house, Stable, or Ware-house*, shall upon Conviction have a *Certificate* under the Hand of the Judge, before whom he was convicted, certifying the same; and also within what Parish the Felony was committed; and if several shall assist in Taking such Felon, and a Difference should arise touching their Right to the Certificate, the Judge may direct so many Shares to be divided amongst the contending Parties, which may be assigned once and no more; and by Virtue thereof the original Proprietor or Assignee shall be discharged of all Parish or Ward Offices within the Parish where the Felony was committed, which *Certificate* must be enrolled by the Clerk of the Peace, who shall have for his Fee one Shilling and no more.

And if the Person is killed in taking House-breakers, Horse-stealers, or other Felon, his Executor or Administrator shall have a Right to the Certificate *gratis*.

A Felon out of Prison discovering Two of his Accomplices in any Burglary, House-breaking, or Felony in stealing Horses, Money, Wares or Goods, from whom the Benefit of Clergy is taken away, and such Accomplices being convicted thereof, the Discoverer shall have his Pardon for any Felony committed before the Discovery, which Pardon shall be a good Bar to an Appeal.

He who rescues a Felon from the Sheriff, who was carrying him to Execution, is guilty of Felony; and so is he who voluntarily suffers him to escape.

A Person was convicted of Murder, and being in the Place where Prisoners stand at the *Old Baily*, T. S. came thither pretending some Business with him, and watching the Keepers, he took an Opportunity of going out and the Prisoner followed him, but they were soon retaken, and then T. S. said he had done what he ought to do to help his Friend, who was in Danger of his Life; this was adjudged Felony.

A Chamber in *Somerset-house* was broke open, and the Offender was indicted for breaking *Domum mansionalem*; adjudged not good, because the whole House is *Domus mansionalis*, and this is not like Breaking open a Chamber in the Inns of Court, for every Person hath a separate Interest in those Chambers, and therefore each Chamber may properly be called *Domus mansionalis*.

Barns and *Out-houses* adjoining to the Dwelling-house are reputed Part of the Mansion-house, and 'tis Burglary to break them open.

So where a Man hires an Apartment in the House of another, if 'tis broke open, some are of Opinion the Offence may be laid in the Indictment to be in *Domo mansionali* of him who hires it; but the better

ter Opinion is, that the Offender ought to be indicted for Breaking open *Domum mansionalem* of the Proprietor.

Servant
opening the
Door.

A Thief finding the Door of a Dwelling-house fast lock'd, pretended to have some Business with the Master, and desired to speak with him; and thereupon the Servant opened the Door, and the Thief entered and robbed the House, this is Burglary; for the Event shews, that he intended at first to commit a Robbery, and the Door being opened upon a false Pretence, made the Fact Burglary, tho' there was no actual Breaking.

Breaking
open an
House, or
Shop, or
Ware-
house in
the Day-
time.

And to this Purpose it was enacted, that if any Person feloniously take away Goods out of a Dwelling-house, the Owner or other Person being therein and put in Fear, or shall rob any Dwelling-house in the Day-time, any Person being therein, or shall be accessory to the same, or shall break any Dwelling-house, Shop, or Ware-house thereunto belonging in the Day-time, and feloniously take away Goods to the Value of 5 s. tho' no Person therein, or who shall counsel, hire, or command another to commit Burglary, shall not have the Benefit of Clergy.

Discover-
ing Bur-
glars.

He who hath committed Burglary, and being out of Prison, shall discover Two or more Burglars, who shall be convicted thereof, such Discoverer shall have his Pardon for any Burglary which he shall have already committed, which Pardon shall be a Bar to an Appeal.

Appre-
hending a
Burglar.

He who shall apprehend another guilty of Burglary, or felonious Breaking open an House in the Day-time, and prosecutes him to Conviction, shall within one Month after such Conviction, receive of the Sheriff 40 l. upon tendring to him a Certificate under the Hand of the Judge who convicted the Offender, certifying such Conviction; and if the Sheriff shall not pay it, he shall forfeit double to the Party grieved, to be recovered in the Courts at Westminster, with treble Costs.

And where any Person is killed in Taking an House-breaker, then his Executor or Administrator shall be entitled to the 40 l. upon the Certificate of the Justice of Assize in the County where the Fact was done, or of the Two next Justices of Peace, that such Person was killed.

Entering an
House
without
Breaking
it.

He who enters into the Dwelling-house of another, either by Day or Night, without breaking it, with an Intent to commit Felony, or being in the House commits Felony, and in the Night-time breaks the House to get out, Burglary without Clergy.

And Tak-
ing more
than the
Value of
40 s.

Stealing Money or Goods to the Value of 40 s. being in a Dwelling-house or Out-house thereunto belonging, tho' it was not actually broken, and tho' no Person was therein, Burglary without Clergy; and so 'tis in the Aider and Assister.

By another Paragraph in the same Statute 10 & 11 Will. 3. 'tis enacted, that if any Person shall steal out of a Shop, Ware-house, &c. any Goods privately and feloniously, of the Value of 5 s. or more, tho' such Shop, &c. be not broke open, &c. or that shall assist in committing such Offence, &c. shall not have the Benefit of Clergy; now the Case at a Sessions in the Old Bailey 9 Geo. was thus:

§. A Shirt, which was the Property of W. R. was left in the Shop of T. S. to be sent to a Seamstress to mend, and it was stolen by the Prisoner out of the Shop, for which he was indicted and convicted; and the Question was, whether he should have his Clergy; and adjudged that he might, for this was not a Felony within that Statute which

which was made as a Remedy for the Owners of Shops to preserve their own Goods there by Way of Trade, and therefore did not extend to Goods casually lost there, and consequently Stealing such Goods to the Value of 5 s. was not Felony within that Statute, and without Benefit of Clergy.

Fairs. Vide Tit. Markets.

CHAP. XLI.

Fees.

GENERALLY, as I have said elsewhere, any publick Officer shall take ^{§. 1.} no other Fees or Rewards, for doing any Thing relating to his ^{Where due} Office, than some Statute in Force gives him; or else, as hath been anciently and accustomably taken: And if he do otherwise, he is said to do it colore officii, and he is therein guilty of Extortion. I shall therefore, for the Justices of Peace Direction herein, take Notice of some Fees, they and others are to take, and leave them to inquire for the rest in some proper Titles in this Book.

Sheriff taking more than 12d. for every 20 s. of the yearly Value of Lands above 100 l. per Annum, and 3 s. 6d. if under that Value, for executing a Writ of Possession, or taking Poundage for executing a Ca. Sa. or charging one in Execution for a greater Sum than really due, this is Extortion; and being convicted, shall forfeit treble Damages to the Party grieved, and double the Sum extorted, and 200 l. more to be divided between the King and the Prosecutor. 3 Geo. c. 15.

12 R. 2. 10. Every Justice of Peace may for every Day they keep their Sessions ^{§. 1.} (which by that Statute may be three Days) take four Shillings, and ^{Sessions Fees} their Clerk two Shillings per Diem, of the Fines and Amercements

14 R. 2. 11. coming of their Sessions by the Sheriff's Hands, but by 14 Rich. 2. 11. No Duke, Earl, Baron, or Baronet, (so is the Print in Pulton, but the Original is Bannoret) albeit they be assigned Justices, and hold their Sessions with other, shall take any Wages for their Office.

27 H. 8. 16. Where Inrolments are to be made of Deeds, if the Lands exceed ^{§. 1.} not the yearly Value of forty Shillings, the Justice and Clerk shall take ^{Inrolment} two Shillings, viz. One Shilling the Justice, and one Shilling the Clerk. And if it exceed forty Shillings per Annum, then five Shillings, viz. the Justices two Shillings six Pence, and Clerk two Shillings six Pence. Vide postea Inrolment.

Fees of Sheriffs, Bailiffs, and Gaolers, about Arrests. See before Title Extortion.

5 & 6 E. 4. The Party licensed to keep an Alehouse, shall pay for the Recogni- ^{§. 1.} zance directed by 5 & 6 Ed. 6. c. 25. but twelve Pence. ^{Alehouse}

5 Eliz. 12. Every License to be a Badger, Drover, Lader, Kidder, Carrier, or Licensee Buyer of Corn, &c. shall be made by the Clerk of the Peace only; for which he shall take twelve Pence, and no more.

3 Eliz. 4. Justices of Peace, Mayors, and Head Officers, for every Day they sit in Execution of the Statute of Labourers (not exceeding three Days at one Time) shall take five Shillings per Diem each, out of the Fines and Amercements happening by that Statute.

Gun. The Clerk of the Peace shall take for a Licence to shoot in a Gun¹ Jac. 27.
for Hawk's Meat, twelve Pence and no more.

Wills and Administration. §. 5. Where the Goods amount not to 100s. nothing shall be taken for²¹ H. 8. 5.
the Probat of a Testament, saving six Pence to the Scribe for Writing,
and so for an Administration, the Testament being exhibited to him
with Wax; and if the Goods exceed 100s. and not forty Pounds, the
Party shall pay for the Plea but three Shillings six Pence, viz. two
Shillings six Pence to the Ordinary, &c. and twelve Pence to the
Scribe. And if the Goods exceed forty Pounds, then to pay five Shil-
lings, whereof two Shillings six Pence to the Ordinary, and two Shil-
lings six Pence to the Scribe, or else the Scribe may refuse two Shil-
lings six Pence, and take one Penny for every Line containing ten
Inches: And the Party shall pay for Administration where the Goods
exceed 100s. and not exceeding forty Pounds, two Shillings six Pence,
and not above. And if any Person require a Copy of the Testament
or Inventory, the Ordinary, &c. shall deliver it, taking only such Fee
as is to be taken for Probat, or else the Scribe may take one Penny for
every Line being ten Inches: But as to Seamens Estates and Admi-
nistration thereof granted, there are certain Fees appointed by a Sta-
tute made 22 & 23 Car. 2.

*Testimo-
nial.* The Parson, Vicar, or Curate of a Parish, shall take for the Ma-^{22 & 23}
king of a Testimonial of a Servant, &c. but two Pence. Car. 2.
⁵ Eliz. 4.

Citation. No Ordinary shall take for the Seal of any Citation above three²³ H. 8. 9.
Pence.

Coroner. §. 6. No Coroner shall take above thirteen Shillings four Pence for his³ H. 7. 1.
Fee, upon View of the Body, of the Goods of the Slayer or Murderer of
any; or else of the Amerciaments, upon any Parish for an Escape,
and nothing where the Person is dead by Misadventure.

As for the Fees in Sessions, for traversing, trying, or discharging¹ H. 8. 7.
Indictments, discharging Recognizances of the Peace and Good Be-
haviour, &c. These vary according to the Custom of the Country, and
in that Case Consuetudo loci est observanda.

*See the
Oath.* §. 7. As to the Justice of Peace himself touching Fees or Profit by him
to be taken, his Oath ought to direct him, which is as to that Purpose,
c. 1. §. 2. That you take nothing for your Office of Justice of Peace to be done
but of the King, and Fees accustomed, and Costs limited by the Statute.

C H A P. XLII. Vide XXI.

Fish.

*Conserva-
tors.* §. 1. Every Justice of Peace is a Conservator of Rivers, and of the Sta-^{West. 2.}
tutes made in that Behalf, (sc. of the Statutes of 13 Ed. 1. c. 47.^{47.}
¹³ R. 2. cap. 19. and 17 R. 2. cap. 9.) within this County where he¹³ R. 2. 19.
is a Justice, and may appoint and swear Under-Conservators; and^{P. Fish. 1.}
(when he may attend it) ought to survey all the Wears in the Rivers,
that they be of a reasonable Wideness, and all other Defaults done a-
gainst the afore said Statutes. ^{P. Just. 14.}

Nets. Every Justice of Peace may burn the Nets and other Engines put
or cast into Waters, wherewith the Fry or Breed of any Fish may be
taken or destroyed; and this shall be for the first Offence: And for the

second Offence the said Justice of Peace may (as it seemeth) imprison such Offenders for a Quarter of a Year; and for the third Offence, one whole Year: And as the Trespas or Offence increaseth, so may the Justice of Peace increase the Punishment of such Offenders. See the Statute 13 E. 1. 47. 13 R. 2. 19. and 17 R. 2. 9.

2 Instit.
p. 468.

To speak it once for all, where a Penalty is appointed upon Conviction of a third Offence, it must be intended (if not expressed in that Statute) that there be, and ought to be Convictions for the first Offence, and so for the second, before the Person shall incur or bear the Penalty for the third Offence; and the third Offence must be committed after the second Offence, and Conviction thereof, that is, lawful Judgment given for the second, and so the second after the first.

3 Jac. 12.

By Warrant of any one or more Justices of Peace, the Constables and Church-wardens (where any Offence is committed in destroying the Spawn or Brood of Sea-fish, against the Statute made 3 Jac. Regis) may levy the Forfeitures of the Offenders by Distress and Sale of the Offenders Goods, rendring to the Offenders the Surplusage.

The Particulars of the said Statute 3 Jac. Regis are as followeth:

§. 2.

1. No Person in any Haven, Harbour or Creek, or within five Miles of the Mouth of any Haven, Harbour, or Creek of the Sea, shall fish with any Draw-net, or Drag-net, under three Inches meash, (viz. One Inch and an half from Knot to Knot) except for Taking of Smoulds in Norfolk only; and except for Taking of Herring, Pilchards and Spicots.

2. No Person in any Haven, Harbour, or Creek, or within five Miles of the Mouth of any Haven, &c. shall fish with any Net with Canvas, or other Engine or Device, whereby the Spawn, Fry or Brood of any Sea-fish may be destroyed.

3 Jac. 12.

And for every such Offence the Offenders shall forfeit their Nets, and ten Shillings in Money; the one Half thereof to be to the Use of the Poor of the Town or Parish where the Offence shall be committed, and the other Half to him that will sue for the same; and to be levied by the Mayor or other Head Officer of every City, Borough, or Town Corporate, or by Warrant from one or more Justices of Peace, *ut supra*.

Touching the Fishing for Pilchards, &c. in Cornwall and Devon, see the said Act. And for general Fishing the Act of 15 Car. 2. c. 14.

14 Car. 2.
cap. 31.

If any Ling, Herring, Cod or Pilchard, fresh or salted, dried or bloated, or any Salmons, Eels or Congers taken by any Foreigners, Aliens to this Kingdom shall be imported, sold, uttered, or exposed to Sale in England, any Person may seize it; one Moiety to the Seizor, the other to the Poor where seized. 18 Car. 2. c. 2.

§. 3.
Imported.

But now by the Statute of 32 Car. 2. Stock-fish and live Eels may be imported into England, notwithstanding 18 Car. 2.

§. 4.
Alienists.

No suspicious or idle Person, shall in the Night-time assemble or gather together about the Boats, Nets or Cellars belonging to any Pilchard-Craft upon the Coasts of Devon, and having no Business there, and having Notice by the Company to be gone; every Person so refusing upon Complaint to a Justice of Peace shall pay five Shillings to the Poor, or be set in the Stocks five Hours. 14 Car. 2. cap. 28.

If any Person shall use any Casting-net, Chief-net, Drag-net, Trammel-net, Shove-net, or other Net whatsoever; or any Angle, Hair-noose, Troll or Spear, or shall lay any Wear, Pots, Nets, Fish-

§. 5.

‘ Fish-hooks, or other Engines, or shall take any Fish by any other
 ‘ Means or Device whatsoever, in any River, Stew, Pond, Mote, or
 ‘ other Water; or shall be Aiding and Assisting thereunto, without the
 ‘ Consent of the Lord or Owner of the Water, and be convicted by
 ‘ Confession, or Oath of one Witness before one Justice of Peace of the
 ‘ County, Division, Riding or Place, shall recompence the Party
 ‘ such Damages, and within such Time as the same Justice shall think
 ‘ fit, not exceeding treble Damages, and pay to the Overseers for the
 ‘ Use of the Poor such Sum of Money as the Justice shall think fit,
 ‘ not exceeding ten Shillings, and in Default of Payment to be levied
 ‘ by Distress and Sale of Goods; and for Want of Distress to commit
 ‘ the Offender to Prison for such Time as the Justice shall think fit, not
 ‘ exceeding one Month, unless he shall by Bond with one competent
 ‘ Surety or Sureties be bound to the Parties injured, not exceeding ten
 ‘ Pounds never to offend in like Manner. 22 & 23 Car. 2.

‘ If a Fishmonger sell fish at unreasonable Prices, he is punishable
 ‘ for it by Indictment. So likewise, if a Maltster buy Barley, and sell
 ‘ the Malt at unreasonable Prices, he is punishable for the same by
 ‘ Indictment. P. 12 Jac. Rolls, Part 15. 11.

Severn. If any Person shall in the River of *Severn*, fish with, or make use ^{30 Car. 2.}
 of any Engine or Device, whereby any Salmon, Trout or Barbel ^{c. 9.}
 under the Length appointed by the Statute of 1 *Eliz.* shall be taken or
 killed, or shall fish with any Net for Salmon, Salmon-mart, Salmon-
 peal, Pike, Carp, Trout, Barbel, Chub or Grayling, the Mesh
 whereof shall be under two Inches and an half Square from Knot to
 Knot, or above twenty Yards in Length, and two Yards in Breadth,
 or above fifty Yards in Length, and six Yards in Breadth in the Wing of
 the Net in the said River, from *Ripplestock-lake* to *Gloucester-Bridge*,
 or above sixty Yards in Length below *Gloucester-Bridge*, and six Yards
 in Breadth in the Wing of the Net, or shall fish with more than one
 of those Nets at once, or shall use any Device for Taking the Fry of
 Eels, he shall forfeit five Pounds for every Offence, and the Fish so
 taken, and the Instruments used in Taking them; and shall also for-
 feit five Pounds for every Time he or they shall water any Hemp or
 Flax in the said River.

Spawn. If any between the first of *March* and the last of *May*, shall do any *Ibid.*
 Act whereby the Spawn shall be destroyed, they shall forfeit forty
 Shillings for every Offence, and the Instruments employed for the said
 Purpose.

*Conserva-
tors.* The Justices of Peace of the Counties of *Worcester*, *Salop*, and *Ibid.*
Gloucester shall be Conservators of the said River in their respective
 Counties, and make one or more Under-Conservators in their respec-
 tive Limits, to whom or to any Constable, Tithingman or Headbo-
 rough, upon their own Knowledge or Information of any such Offence,
 they shall issue Warrants under the Hands and Seals of any Two of
 them, to search in all suspected Houses, &c. for such unlawful In-
 struments and seize them, and bring them to the Quarter-Sessions to
 be destroyed.

*Punish-
ment.* None shall be punished for the said Offences but by Information or *Ibid.*
 Indictment before the Justices of Assize, and *Nisi prius*, *Oyer* and *Ter-
 miner*, and Gaol-delivery, or the General Sessions of the Peace; the
 one Moiety of the Forfeitures shall be to the Use of the Poor of the
 Parish where the Offence shall be committed, the other to the Prose-
 cutor, to be levied by *Fieri facias*, or *Capias ad satisfaciendum*.

6 & 7 W. 3. cap. 16. After the 1st of May 1695, the Justices of Peace in the Counties of *Thames. Commissioners.* *Wilts, Gloucester, Oxford, Berks and Bucks*, shall be in their respective Counties, Commissioners for putting this Act in Execution. They or any Five of them, shall at their Quarter-Sessions make Orders for settling reasonable Rates, to be taken by the Owners of Boats, Barges, &c. and by the Tenants of all Locks, Wears, &c. within their respective Counties, upon the Rivers of *Thames and Isis*, and make such other Orders to prevent Abuses, as to the said Commissioners, or any five of them shall seem meet.

Ibid. The Rates of Carriages in such Boats, Barges, &c. shall be assessed in their Quarter-Sessions after *Easter* yearly, and publish the same in Writing to every Mayor, or Head Officer in every Market-Town. And if the Owner of any Boat, Barge, &c. takes above the said Rates for Water-carriage, or any Person break the said Orders, he shall, for each Offence forfeit *5 l.* to the Party grieved, with double Costs of Suit, to be recovered in any Court of Record at *Westminster.*

Ibid. Justices of Assize upon Complaint made by Persons aggrieved by Rates or Orders, may confirm, vacate or alter the same, as shall be thought convenient.

Such Rules and Orders (except those for Water-carriage) shall be written in Parchment, and signed by five Commissioners, and so signed shall continue in Force for seven Years, and from thence till some new Rule or Order be made in the same Case.

Ibid. Wears, Locks, &c. shall be adjudged to lie in that County where the same are taxed to the Church and Poor.

Ibid. Nothing in this Act shall extend to give any Jurisdiction to the aforesaid Commissioners to put this Act in Execution, between the Village of *Bercol* and the City of *Oxford*; but that such Power shall still remain in the Commissioners appointed by the University and City of *Oxford*. Nor shall any Thing herein lessen the Power of the Mayor and Citizens of *London*, or any other Person.

Ibid. The Barge-master to be answerable for Damages done by his Barge or Bargemen.

Ibid. This Act to continue for nine Years, and from thence to the End of next Session of Parliament.

Fish and Fishing.

4 & 5 Ann. ff. cap. 21. AN Act was made in the 5th Year of Queen *Anne*, for the Encrease and better Preservation of the *Salmon* and other Fish in the Rivers in the Counties of *Southampton* and *Wiltshire*.

By the aforesaid Statute 'tis declared, that the Statute 13 *Ed. 1.* shall extend and be in Force, as well to Rivers, Creeks, and Waters in the said Counties, as to the Waters of *Humber, Ouse, Trent* in that old Act mentioned, and under the same Penalties as therein are set forth.

And 'tis farther enacted, That the Justices of Peace residing within six Miles of any Rivers, &c. in *Hampshire* or *Wilts*, may, under their Hands and Seals appoint Overseers of the said Statute; *Anne*, who shall be sworn before the said Justices, and then they may take Offenders and destroy their Nets or Engines, which are kept or used contrary to any Statute relating to Fishing.

And such Overseers of the said Statute may bring Offenders, &c. before a Justice of Peace, and every Offender shall, for the first Offence, forfeit

forfeit not under 20 s. nor above 5 l. and double for the second Offence; and as that shall encrease, so the Penalty shall be doubled by the Justice before whom convicted, which is to be upon the Oath of one or more Witnesses, or the Confession of the Party offending; one Moiety to the Informer, the other to the Poor of the Parish where the Offence was done; and if not paid on Demand, or if not able to pay it, then the Justice before whom the Party was convicted shall send him to the House of Correction for three Months.

This Clause is repealed by the Stat.

1 G. c. 18. as to Outport of Fishery, &c.

After the 30th of *June* till after the 11th Day of *November*, Salmon shall not be taken or offered to Sale under the like Forfeiture and Penalty.

And if any Salmon shall swim into Ditches, Cuts or Water-carriages of Meadow Grounds, within the Time restrained by this Act; then the Owners or Tenants of such Grounds shall suffer them to pass into the main Rivers, and not wilfully destroy them under the like Penalties.

Those who are Owners or Tenants of Mills in *Hampshire* or *Wilt.*, upon any of the Waters or Rivers there, must keep open a small Hatch of a Foot square in the direct Stream, and where there is no Wheel for the Salmon to pass and repass, from 11th Day of *November* to the last Day of *May*, and shall not during that Time use any Devices for killing or taking Salmon in that Hatch, under the like Penalties.

If Pots are laid to catch Eels between the first of *January* and the 10th of *March*, Racks must be set before them to keep out the old Salmon, and after the said 10th of *March* to the 30th of *May*, no Pot shall be laid but such as shall be wide enough to let the young Salmon pass thro' to the Sea, and shall not take or keep, or offer to Sale any of the young Fry during that Time, under the like Penalties.

Sea Trouts Sea Trouts shall not be taken in any of the said Rivers, Creeks, or Arms of the Sea, in either of the said Counties, after the 30th of *June* to the 11th Day of *November*, under the like Penalties.

To be levied by a Warrant of the Justice, &c. before whom the Conviction is made by Distress and Sale of the Goods of the Offender; and for Want of Distress to be sent to the House of Correction.

The like is in Paragraph 57, in the Stat. 9 Ann. cap. 26.

The Lord Mayor and Aldermen of *London*, and the Justices of Peace of the respective Counties, for all Offences in their several Jurisdictions, in wilfully killing or exposing to Sale, any Brood or Fry of Fish, or any Spawn or Spat of Oysters, or any unwholsome Fish, or in catching, killing, or destroying any Fish out of Season, or by exposing such Fish to Sale, or by wilfully buying, harbouring, or receiving, or using as Food for Hogs, or otherwise, any Spawn or Fry of Fish, or catching Salmon between the 24th of *August* to the 11th of *November* every Year, may either upon View or Complaint made, examine and determine the same upon Oath; and upon Conviction set a Fine not exceeding 10 l. nor under 5 s. to be levied by Distress as aforesaid, unless the Fine be forthwith paid, or good Security given to abide the Order of the Court of Conservancy, if the Conviction be before the Lord Mayor, or at the Quarter-Sessions by the Justices, in Case the Offender shall appeal to either; and for Want of Distress, then to be committed to the House of Correction, without Bail, for any Time not exceeding two Months.

And

And if the Offence is committed within the Jurisdiction of the Lord Mayor, then one Moiety of the Fine shall be paid to him, the other to the Informer; and if elsewhere, then to the Poor of the Parish, &c. and the Prosecutor.

9 Ann.
cap. 26.

The Court of Assistants of the Fishmongers Company, or the major Part of them, may make By-Laws for the Government of the Company, to be approved by the Lord Mayor and Aldermen, and allowed and confirmed according to the Statute, &c. and every Year there shall be a fit Person chosen out of the six Wardens of that Company, after the 10th of June, by the Lord Mayor and Aldermen, to be a Master of the Art of Fishery, and out of the twelve Assistants six fit Persons to be Wardens of that Art, whereof the Water-Bailiff of *London* shall be one; and out of Sixty of the Commonalty, thirty Persons to be Assistants; which said Master, Wardens and Assistants, or any sixteen of them, with three Wardens, are constituted the Court of Assistants, and shall meet on the first Thursday in every Month in their Common Hall to form a Court, and keep it for regulating Abuses in Fishery.

The Water-Bailiff shall be summoned to attend the Court, and the major Part of them may call before them any Person who shall fish or drudge as common Fishermen, within the Limits of the Fishery, and cause every Person duly qualified, or who have served on Board the Navy two Years, to register their Names there, together with the Place of his Abode, and the Name of every Servant or Apprentice he hath, using the Trade of Fishing or Drudging within the said Limits; and shall cause a Mark to be set on every Boat, not to be defaced, changed or altered, that Offenders, &c. may be found out; and that the Crown may know what Number of able Seamen that Company can furnish; and if any Person duly summoned shall neglect to appear at the said Court, he shall be sent on board the Navy and disabled from Fishing in the *Thames* for two Years.

The Lord Mayor, upon Application to him made by the Court of Assistants, may order Stakes to be driven in any Place within the River, between the *London* Mark-stone above *Stains-Bridge* and *London-Bridge*, so as it be not prejudicial to the Navigation of the River, and no Person shall remove or loosen them.

Fish shall be sold once and no more within *Billingsgate*, or 150 Yards of the Dock, and no Person shall sell or expose to Sale any Fish in *Billingsgate Market*, or within 150 Yards, &c. except free Fishmongers in their Houses and Shops, and Fishermen and the first Importers thereof, &c.

The Court of Assistants shall pay the Water-Bailiff every Year clear of all Taxes, on *Easter* and *Michaelmas*, by equal Portions; and he may grant Licenses to fish in their several Seasons, according to Custom.

No Fish shall be sold or exposed to Sale in *Billingsgate Market*, or within 150 Yards of the Dock, before three of the Clock in the Morning, from *Lady-day* to *Michaelmas*, and before five in the Morning from *Michaelmas* to *Lady-day*, and the proper Officer shall ring a Bell for that Purpose.

The like Clause as to the Fine and Distress, as in the Statute 4 & 5 *Anna.*

This Act shall be taken as a publick Act; and if an Action is brought for putting it in Execution, the Defendant may plead the

R

general

general Issue and give the Statute in Evidence together with the special Matter, and if he recover shall have full Costs.

After 19 September 1715, no flat or fresh Fish whatsoever shall be imported, which were taken, bought, or received of any Foreigner, or out of any Stranger's Bottom (except Protestant Strangers dwelling here) nor shall any Person give or exchange Goods for such Fish to taken, Geo. cap. 18.

Master, &c. of a Smack in which any Fish shall be brought to Shore contrary to this Act, being lawfully convicted upon his Appearing, or after, or Default to appear, being summoned, before one or more Justices, &c. where the Offender resides or shall be found, and this upon the Oath of two credible Witnesses, shall forfeit 20*l.* for every Offence, to be levied by Warrant of such Justices, by Distress, &c. and for Want thereof to be committed to Gaol for 12 Months.

Nothing in this Act shall extend to prevent the Importing or Buying Anchovies, Botarge, Cavear, Eels, Stockfish, or Sturgeon.

Nets. Any Person using at Sea, upon the Coast of *England*, any Sea-net for catching Fish (except Herrings, Pilchards, Sprats and Lavidnian) with a Mesh in his Net less than three Inches and an half from Knot to Knot, or any false or double bottom Cod or Pouch, or shall put any Net, tho' of a legal Size, upon or beyond the other, in order to destroy the small Fish, the Forfeiture is the Nets and 20*l.* for every Offence, to be recovered as the Penalty above inflicted on the Master, &c. and in Default of Payment or Distress, to be committed to Gaol for twelve Months.

The Penalties in this Act (except for illegal Nets) shall be one Moiety to the Informer, the other to the Poor of the Parish where the Offence shall be committed, necessary Charges being deducted.

Where any illegal Nets shall be proved to be forfeited, they shall be publickly burnt by Virtue of a Warrant of a Justice, &c. for that Purpose.

He who brings on Shore in *England*, or sells or exposes to Sale, or exchanges for other Goods, any unsizable Fish which shall not be of the several Lengths from the Eyes to the Extent of the Tail,

	Inches.		Inches.		Inches.
<i>S.</i> Bass	12	Dab	8	Plaice	8
Bret	16	Flounder	6	Sole	8
Brill	14	Mullet	12	Turbot	16
Codlin	12	Pearle	14	Whiting	12

shall forfeit the Fish, and 20*s.* for every Offence, one Moiety to the Informer the other to the Poor of the Parish, to be levied by Warrant of a Justice, by Distress, &c. and for Want thereof to be sent to the House of Correction and whipp'd, and kept to hard Labour for six Days, and not longer than fourteen Days.

The Prosecution must be within one Month after the Offence.

Any Person may import and sell any Quantity of Lobsters or Turbots, in the same Manner they might have done before the Statute 10 & 11 Will. 3. cap. 24. was made.

Salmon. It shall be lawful for Owners of Fisheries at any Time from 11th of June till 1 August every Year, to take or kill any Salmon, or Salmon-Peal or Salmon-Kind, or expose them to Sale within the Times aforesaid.

Pro-

Provided, that such Owners, &c. or their Servants, shall not, between the first of *August* and the 12th of *November*, take, kill, or wilfully hurt any Salmon by *Angles, Gins, Hooks, Nets, Reels*, or other Devices, or offer to Sale any of the said Fish so taken, under the like Penalties as in the Statute 4 *Geo. 5* *Ann.*

Laying or drawing any Nets or Engines, or doing or causing to be done, any other Act in the Rivers herein mentioned, *viz. the Calder, Derwent, Dee, Dunn, Eure, Mersey, Ouse, Ribble, Severn, Swaile, Teem, Tees, Trent, Ware and Wyre*, or any of them, where by Salmon, &c. not eighteen Inches long, from the Eye to the Middle of the Tail, may be taken or killed, or hindered by any Bank, Dam, &c. from going up the said Rivers to spawn; and being convicted before one Justice, either upon View, Confession, or Oath of one Witness, forfeits 5 *l.* for every Offence, &c.

And so shall he, who from the last Day of *July* to the 12th of *November*, hurts any Salmon, or who shall after that Day, fish in any of those Rivers with Nets not allowed by the Statutes 1 *Eliz.* and 30 *Car. 2.* besides the Fish and Nets, one Moiety to the Informer, the other to the Poor of the Parish where the Offence was done, to be levied by a Warrant of a Justice, and by Distress and Sale, &c. and for Want of a Distress to be committed, for not less Time than one Month, nor for more Time than three Months; and to be held to hard Labour, and to suffer such other corporal Punishment as the said Justice before whom convicted shall think fit, who shall order such Nets to be seized and cut to pieces, or destroyed in his Presence, and shall cause such Banks to be removed at the Charge of the Offender, which, if not paid upon Conviction, &c. shall be levied in the same Manner as aforesaid.

Salmon shall not be sent from any of the said Rivers to Fishmongers in *London*, or their Agents, weighing less than six Pounds each Fish; he who is convicted of buying, selling, or sending Salmon of less Weight, shall forfeit 5 *l.* besides the Fish so bought and sold; one Moiety to the Informer, the other to the Poor, &c. and if not paid upon Conviction, then to be levied by Warrant, &c. by Distress and Sale, &c. and for Want of Distress to be committed and kept to hard Labour for three Months, unless the Forfeiture be paid in the mean Time.

Offenders punished by this Act shall not be prosecuted, nor incur the Penalty of any other Law for the same Offence.

An Appeal lies to the Quarter-Sessions, who are finally to determine, &c.

This Act shall not extend to any antient Locks or Weirs, but that the Proprietors may repair, rebuild, remove, or take them down, &c.

The Rates allowed for Fish exported are as follow:

5 Geo.
cap 18.

§. For every Cask of Pilchards or Scads, containing 50 Gallons, 7 *s.*
For every Hundred of Codfish, Ling or Hake (except Haberdine) in Length fourteen Inches from the Bone in the Fin to the third Joint in the Tail, 5 *s.*

For every Barrel of wet Codfish, Ling or Hake, containing thirty-two Gallons, 2 *s.*

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For

For every Hundred of dried Codfish, being or Flake, called Haddock, 3s.

For every Barrel of Salmon, containing thirty-two Gallons, 5s. 6d.

For every Barrel of white Herrings, containing thirty-two Gallons, 2s. 8d. And of Red Herrings, 1s. 9d. And of smolten Herrings, 1s.

For every Tunn of dried Red Sprats, 1s.

And in Proportion for a greater or lesser Quantity, which Allowances shall be paid by the Collector of the Duties on Salt in the Port from whence exported, within thirty Days after Demand. See the Statute, and also the Statutes 8 Geo. cap. 4. 161 and 10 Geo. cap. 10.

Black
Facts.

He who shall be armed and have his Face black or disguised, and shall unlawfully take away or steal any Fish out of a River or Pond, or break down any Head or Mound of a Fish-pond, whereby the Fish shall be lost, is a Felon without Benefit of Clergy.

Refants. Vide Partridge.

CHAP. XLIII.

Fire.

Servant firing any Dwelling-house or Out-house, thro' Negligence, forfeits One hundred Pounds, to be paid to the Church-wardens, to be given to the Sufferer, or to be committed to the House of Correction, as the Justices shall think fit.

CHAP. XLIV. Vide XXII

Forcible Entry. See postea cap. 182.

§. 1. **W**hat is Forcible Entry, and what is a Forcible Holding or Detainer; see the other Title, *Forcible Entry, hic postea* cap. 125. 15 R. 2. 3. 8 H. 1. 9. P. 2. Dyer 219.

Every Justice of Peace, upon Complaint to him made, or upon other Notice to him given, of any Forcible Entry into, or forcible Holding or Detainer of Possession of any Lands, Tenements, or other Possessions (or of any Benefices or Offices of the Church) contrary to these Statutes, without any examining, or standing upon the Right or Title of either Party, ought in convenient Time (at the Costs of the Party grieved) to do Execution of these Statutes in Manner and Form hereunder following. See *Lamb. 150.*

§. 1. **1.** First, he ought to go to the Place where such Force shall be. And he may take with him sufficient Power of the County, or Town, by his Discretion; and the Sheriff also, if need be, to aid him, as well for the arresting of such Offenders, as also for removing the Force, and for conveying them to the next Gaol. And whosoever (of

(of that County) shall refuse to attend and assist the Justice of Peace herein, shall be imprisoned, and fined to the King. 15. R. 2. cap. 2.

2. He ought to arrest and remove all such Offenders, as at his coming he shall see or find continuing the Force; and may take away their Weapons and Armour, and cause them to be prized, and after to be answered to the King as forfeited, or the Value thereof. *Vide Libr. Intrat. Tit. Faux. Imprisonment, di. 7.*

If the Doors be shut, and they within the House shall deny the Justice to enter, he may break open the House to remove the Force. *Break open Doors.*

But if such Offenders, being in the House at the Coming of the Justice, shall make no Resistance, nor make Shew of any Force, then the Justice cannot arrest or remove them, except upon the Enquiry, a Force be found. See *Crompt. 73.* and the other Title, *Forcibly Entry.*

Also if the House or Land which is holden with Force, shall extend into two Counties, and the Offenders remove their Force into that Part of the House or Land which is in the other County, when the Justices do come, they cannot then remove the Force. *Two Counties.*

And if the Justice at his Coming shall see or find a Force, and shall remove the Offenders, yet he may not upon his own View restore the Party to his Possession again, without Enquiry first made of the Force by a Jury. *§ 3. Restitution not without Enquiry.*

3. Also the Justice ought to record such Force by him viewed; which Record shall be a sufficient Conviction of the Offenders, and the Parties shall not be allowed to traverse it. *§ 4. Record.*

And this Record (being made out of the Sessions by a particular Justice) may be kept by him; or he may make it indented, and certify the one Part into the King's Bench, or to leave it with the Clerk of the Peace, and the other Part he may keep himself.

The Form of the Record; see the other Title, *Forcible Entry* among the Precedents.

4. Also he ought to commit (immediately) to the next Gaol all such Persons as he shall find and see continuing the Force at his Coming to the Place; the said Offenders there to remain convict by his own View, Testimony and Record, until they have paid a Fine to the King, (or given Security for the Payment thereof.) For this View of the Force by the Justice (being a Judge of Record) maketh his Record thereof (in the Judgment of the Law) as strong and effectual, as if the Offenders had confessed the Force before him; and (touching the restraining of Traverse) more effectual than if the Force had been found by a Jury upon the Evidence of others. *§ 5. Imprisonment committed on View.*

And yet the Words of the Statute are more large; *sc. And if he do find any that made any such forcible Entry, or that hold the Place with Force, &c. he shall commit the Offenders to the Gaol, &c.* But such Force must be in the Presence or View of the Justice of Peace, or else he can neither record it, nor yet commit the Offenders. 13

H. 7. Crook 41.

The Form of the *Mittimus*; see the other Title, *Forcible Entry*. *§ 6. Fine.*

5. Also the same Justice of Peace, or some of them that shall see the Force (and having the Custody of this Record) are the proper Judges of this Offence; and therefore may assess the Fine upon every such Offender; but it must be imposed severally, and not upon them jointly: And the Justice ought to estreat the same Fine, and to send

in Addition, but the Defendants must bring his Writ of Error. 2 Salk. 490. the

the Estreat into the Exchequer, that from thence the Sheriff may be commanded to levy it for his Majesty's Use. But upon the same Fine so assessed and estreated, the Justice is to deliver the Offenders.

Lamb. 554.

Also upon Payment of the Fine to the Justice, or upon Sureties found (by Recognizance) for the Payment thereof, he may deliver the Offenders out of Prison again at his Pleasure: But *quære* whether the Justice of Peace shall meddle with receiving the Fine, for that the Sheriff is accomptant for all Fines. *Lamb.* 555.

Or the Justices of Peace may record such Force, and commit the Offenders, and after certifie the Record to the Justice of Assizes and Gaol-delivery, (as it was done at *Stafford Assizes*, *An. 26 Eliz.* by the Report of *Mr. Crompton*;) or else to certify it to the General Sessions of the Peace, (as it seemeth to *Mr. Crompton*) and there the Offenders may be fined; for, saith he, the Statute doth not say, that the Fine shall be assessed by them that record the Force, more than by other Justices.

Or rather the Justice of Peace may certify or deliver the Record by him made (and refer the Fine and farther Proceedings therein) to the King's Bench (in Regard of their supreme Authority in such Cases.) And this *Mr. Lamb.* thinketh to be the safest Course.

§. 7. *Enquiry.* 6. Also the Justice of Peace, notwithstanding his own View of the Force, may and ought in some Town or Place, near the Force (at the Costs of the Party grieved) enquire by a sufficient Jury of the same County, to be returned by the Sheriff, as well of those who made such forcible Entry, as of those who made such forcible Detainer. See the Stat. 8. H. 6. cap. 9 & *Pl.* 86.

And here note, that any Justice of Peace alone out of the Sessions may make an Enquiry (being so appointed by the Statute;) whereas otherwise there must be two Justices at the least, to make an Enquiry, or to hold a Sessions, and one of them of the *Quorum Br. Peace.* 14.

And this Enquiry ought to be made, whether the Offenders be present or gone, at the Coming of the Justice of Peace; and though he go not to see the Place where the Force is; for without this Enquiry there can be no Restitution. See more concerning this Enquiry in the other Title, *Forcible Entry, &c.*

Also by the Words of the Statute of 8 H. 6. cap. 9. (*maintenant mesme les Justices doivent enquerir, &c.*) the Justices are to make this Enquiry immediately after the Force committed, and Complaint made to them by the Party griev'd; and yet they may make this Enquiry at any convenient Time after. *Crom.* 124.

§. 8. If the Sheriff shall not duly execute the Justices Precept directed to him for returning a Jury, he shall forfeit 20*l.* And the Justice of Peace may proceed to hear and determine such Default of the Sheriff. See 8 H. 6. cap. 9. *hic. postea.*

The Form of a Precept to the Sheriff to return a Jury *vide hic.*

The Form of the Enquiry, Presentment or Verdict see *hic.*

§. 9. *Restitution.* 7. And if upon such Enquiry, such forcible Entry or Detainer shall be found by the Jury, then the said Justice of Peace shall re-seize the Lands and Tenements so entred upon or holden, and put the Party in Possession again, who was put or holden out. See the other Title of *Forcible Entry.*

But

But the putting out, as also the holding out, must of Necessity be found, and that by express Words in the Indictment. See as before.

And so note, that the Justice or Justices of Peace, recording only the Force by his or their View, may not put the Party into his Possession again, but the Justice must first make Enquiry thereof by a Jury of the County at a special Sessions by the said Justices to be holden; and then the Force being found by the said Jury, the said Justice or Justices may put the Party into his former Possession.

And this Restitution the Justice of Peace may make himself; or he may make his Warrant to the Sheriff to do it: Or else he may certify such Presentment or Indictment taken before him, into the King's Bench, and so leave the Restitution to be awarded out of that Court. See as before.

Co. 9. 118.
Co. 11. 65.
7 E. 4. 18.

But the Justices of Assize and Gaol-delivery, nor the Justices of Peace at their General Sessions, cannot make or award Restitution, except the Indictment were found before them; but the Justices of Peace only, or some of them, that were present at the Enquiry, and when the Indictment was found, they only have Power to make Restitution; except the Justices of the King's Bench, who have a supreme Authority in all Cases of the Crown.

And therefore if the Record (i. e. the Presentment of such Force,) shall be delivered by the Justices of Peace into the King's Bench, or that the same Presentment or Indictment shall be removed and certified thither by *Certiorari*, there the Justices of the King's Bench may award a Writ of Restitution to the Sheriff of the same County, to restore Possession to the Party so expelled.

P. R. 41. b.

After it is found by such Enquiry, that such forcible Entry or Detainer is made, the Justices of Peace may break open the House by Force, to reseize the same, and to put the Party, so put out, in Possession again. And so may the Sheriff, having the Justices Warrant. Break open the House.

The Form of such Warrant from the Justice of Peace to the Sheriff, to make Restitution. See in the other Title, *Forcible Entry*.

But the Justice of Peace may not (in any Case) make a Restitution without such an Enquiry first had, and such Force thereby found; and if the Justice shall make Restitution without Enquiry, 'tis punishable.

Also this Restitution ought to be made to none, but to him only that was put out; so that if the Father be put out by Force, and dieth (after Enquiry, and before Restitution) his Heir shall not have Restitution.

To whom Restitution shall be made. See the other Title, *Forcible Entry*.

Also such Restitution must be made only, where a Man is put out, or holden out, &c. of *House* or *Land*, and is not to be understood of a *Rent*, *Common*, *Adowson*, or such like. See the other Title, *Forcible Entry*.

Also the Justice may make Restitution, notwithstanding any *Offer Traverse* of *Traverse*; but yet upon *Traverse* tendered, 'tis the safest Way for the Justice of Peace to deliver or certify the Presentment into the King's Bench, and so to refer the farther Proceedings therein to them. See the other Title, *Forcible Entry*.

And although these Statutes do inflict no Penalty upon the Justices of Peace, if they shall not execute them; yet if upon Complaint §. 10.
Default of
the Justices
(or cer.)

(or other Notice given of such Force) they shall not at least remove the Force, record it, and commit the Offenders, they are punishable.

In the Case of *Drayton Bassett* (in the County of *Stafford*) *An. 22 Eliz.* certain Justices of Peace of that County, although they dwelt not near the Place) where a great Riot was committed by a forcible Detainer, were for their Default fined in the *Star-chamber*, upon the Statute *17 R. 2. c. 8.* (as Mr. *Crompton* reporteth) which Statute is, that the Sheriff, and all other the King's Officers, shall suppress Rioters who shall assemble themselves in outrageous or great Numbers. See *Crompt. Author des Courts*, fol. 32.

Fine and
commit.

Although the Justice of Peace ought to commit to the Gaol, and may fine all such as he shall see continuing their Force at his Coming to the Place; yet upon Force found by the Jury only, and not viewed and seen by the Justice, (although this Presentment of the Jury be a Conviction of the Offenders) the Justice of Peace may neither fine, nor send to the Gaol the said Offenders, by the Statute of 8 H. 6. which appointeth the Enquiry: For the Justice hath Power by the said Statute to make Restitution only, as saith M. *Lambert* 162. yet M. *Crompton* holdeth the contrary sc. that the Party indicted shall be fined for the Force found, although the Statute of 8 H. 6. speaketh not of the Fine.

But howsoever the Justice of Peace (upon Force found by the Jury) is to remove the Offenders that be present, that so he may restore the other, and may bind the Offenders to their good Behaviour; and if the Offenders be gone, yet the Justice may make his Warrant to take them, and may after send them to the Gaol, until they have found Sureties for their good Behaviour.

Riot.

Note, that if such forcible Entry or Detainer shall be made by Three Persons, or more, then it is also a Riot; and then (if there be no former Enquiry thereof made) the two next Justices of Peace (upon Notice thereof) ought to enquire thereof (as a Riot) by a Jury, within one Month, upon Pain to either of them making Default, *Cro. 68. b.* to forfeit 100*l.*

§. 11.
Defaults
of Sheriffs
in not re-
turning a
Jury.

Also one Justice of Peace may hear and determine the Defaults of Sheriff and Bailiffs, in not returning sufficient Jurors (whereof every one shall have Lands, &c. to the Value of forty Shillings by the Year at the least) before him, to enquire of such forcible Entry or Detainer: And the said Justice of Peace may proceed therein as well by Bill, at the Suit of the Party grieved, as also by Indictment only for the King; and the same Process shall be made against such Persons indicted or sued by Bill in this Behalf, as should be made against Persons indicted or sued by Writ of Trespass, with Force and Arms against the King's Peace. What the Process in such Case is, *vid. Tit. Process.*

Two Ju-
stices.

And though any one Justice of Peace may proceed in every of the former Cases of forcible Entry or Detainer, as aforesaid; yet if two or more Justices shall join therein, it is better; for *Plus vident oculi quam oculus; & securius expediuntur negotia commissa pluribus.* *Co. 4. 46.*

Corporate
Towns.

Also the Mayor, Justice or Justices of Peace, and the Sheriffs and Bailiffs of Cities and Boroughs having Franchise, shall have in the said City, Towns and Boroughs, like Authority to remove such Entries, and to enquire thereof, and of putting or holding out, as the Justices of Peace and Sheriffs in Counties and Shires have.

Also

Ed. 3. 3. Also every Justice of Peace, to whom a Writ upon the Statute of *Northampton* concerning the removing a Force shall be delivered, ought to execute the same Writ, *sc.* he ought to remove the Force, and to certify his Doings therein into the *Chancery*.

And for that the Justice of Peace, to whom this Writ shall be delivered, is herein but a Minister, and is to certify that which he shall do therein, I will here set down the Manner how he shall proceed to execute this Writ.

First, when the Justice of Peace shall come to the Place where the Force is supposed, by this Writ, he may cause Three Oyes for Silence to be made, and then he may make Proclamation in the King's Name, to this Effect.

Lam. 173. *The King's Majesty's Justice of Peace strictly chargeith; and in his Majesty's Name commandeth, all and every Person to keep Silence, whilst his Majesty's Writ, &c. be read, and Proclamation be thereupon made accordingly.*

2. Then may he read, or cause to be read, the Writ, or may declare the Effect thereof.

3. Then let three other Oyes be made; and thereupon make Proclamation again, as followeth.

Fitz. 249. *His Majesty's said Justice doth, by Virtue of his Majesty's Writ, strictly charge and command, that no Manner of Person, of what Estate, Degree or Condition soever, now being within the House of B. &c. (named in the same Writ) shall go armed, or keep Force of Armour or Weapon, nor do any Thing there, or elsewhere, in Disturbance of his Majesty's Peace, or in Offence of the Statute made at Northampton in the Second Year of King Ed. 3. upon Pain of losing his said Armour and Weapons, and of imprisoning his Body at his Majesty's Pleasure.*

God save the King.

4. Then the Justice of Peace may enter and search whether there be any Force of Armour or Weapon worn or born, against this Proclamation, otherwise he may enquire thereof by a Jury. (for so the Writ it self doth warrant him.) And if after Proclamation any such Offenders be found, he ought to imprison them, and to seize to the King's Use, and prize (by the Oaths of some present) the Armour and Weapons so found with them; and the Offenders so imprisoned are to remain there until some other Command be given concerning them from his Majesty, or his Justices. See the Writ, *Fitz. 249.* and the Title, *Bailment* postea.

Crom. 74. But if, upon the Proclamation made, they do depart in peaceable Manner, then hath the Justice no Authority by the Writ to commit them to Prison, nor to take away their Armour.

But when the Justice hath removed the Force, (upon this Writ) he may not put the Party in Possession again; for if he do, he and the Party also are punishable, for the Writ doth authorize the Justice only to remove the Force, and not to make Restitution.

The Form of this Writ upon the Statute of *Northampton*; you may see in *Fitz. N. B. 249.*

The Form of a Certificate, or Return of this Writ into the *Chancery*, see in the other Title, *Forcible Entry*.
 § 13. Also every Justice of Peace (*ex officio*, and without any Writ) may do Execution of this Statute of *Northampton*, and that as well by Force of the Commission, as of the said Statute. ^{2 E. 3. 3. P. Armor 1}

§ 13.
Without
Writ.

The Manner to execute this Statute by the Justice of Peace (*ex officio*, seemeth to be all one as before, *where he hath a Writ delivered him*; saving that when he doth this *ex officio*, and without Writ, he needeth not make any Proclamation, nor to send any Certificate into the *Chancery*: But the Justices may go to the Place where the Force is, and (if it be in an House) he may enter and search, if any Force of Armour or Weapon be worn or born against this Statute; and if any such Offenders be found, he may commit them to Prison, and may seize and prize the Armour and Weapon so found with them. And he ought to record all that which he shall do in this Behalf, and to send some *Estreat* into the *Exchequer*, that the King may be answered of the Armour, or of the Value thereof. ^{Lam. 176.}

But here again the Justice must not make any *Restitution of the Possession* to the Party ousted, but must *only remove the Force*.

Fine.

And concerning the Offenders so found, and committed by the said Justice of Peace, he, (at his Discretion) may fine them, and upon Payment thereof, or upon Sureties found for the same, that the said Justice may deliver the Offenders, even as in the former Statutes of 15 R. 2. & 8 H. 6. Or else he may record such Force, and commit the Offenders, and after certify the Record into the King's Bench, or to the Justices of Gaol-delivery, or to the General Sessions of the Peace, as here in this Title a little before. ^{Cro. 160. Lam. 176. 516.}

The Defendant was convicted for a forcible Detainer, upon the * View of a Justice of the Peace setting forth that he held a *Chamber in a House*, in such a Street and Parish by Force; but did not shew whose House it was, nor whether the Chamber was backward or forward, or how many Pair of Stairs high, and the Commitment was to Newgate; but it did not set forth that Newgate was the County Gaol; and the Statute expressly requires that the Commitment should be thither. ^{* 15 Ric. 2 cap. 2.}

But the Court would not intend that there were two Chambers on one Floor, for they held the Chamber was sufficiently described: However the Conviction was quashed, for tho' they would intend that Newgate was the County Gaol, yet the Words in the Record being all in the preterperfect Tense, when they should be in the present Tense, for that Reason it was quashed.

C H A P. XLV.

Forestaller, Reqrater, Ingrosser.

§ 1.
Butter,
Cheese.

NO Person shall buy to sell again any Butter or Cheese, unless he sell the same in open Shop, Fair or Market; and not in gross upon Pain of Forfeiture of the double Value, to be recovered in any of the King's Courts of Record, one Moiety to the King, the other to the Informer. ^{3 & 4 E. 6. c. 21.}

- 3 & 4 E. 6. c. 21. 'The Word Retail shall be expounded, where a Weight of Cheese or Barrel of Butter, or less, and not above, shall be sold at any Time without Covin.
- Ibid. 'The Statute shall not extend to Inn-keepers or Victuallers, where the same is spent in their Houses.
- 5 E. 6. c. 1. '1. If any Person shall buy any Merchandize, Victuals or other ^{Forestaller.} Thing whatsoever coming by Land or Water to a Market or Fair to be sold, or coming towards any City, Port, Haven, Creek, or Rode of England from beyond Sea, to be sold, or make Promise, or contract for the same; before the same shall be in Market, Fair, City, &c. to be sold, or shall make any Price, or dearer selling of any such Things, or dissuade, move or stir any Person not to come thither, shall be accounted a Forestaller.
- 5 E. 6. c. 1. '2. Any Person that doth regrade, or get into his Hands in any ^{§. 2. Regrater.} Fair or Market, any Corn, Wine, Fish, Butter, Cheese, Candles, Tallow, Sheep, Lambs, Calves, Swine, Piggs, Geese, Capons, Hens, Chickens, Pidgeons, Conies, or other dead Victuals whatsoever brought thither to be sold; and shall sell the same again in the same Fair or Market, or any other within four Miles thereof, shall be taken for an Ingrosser.
- 5 E. 6. c. 14. '3. Any Person that shall get into his Hands by Buying, or Pro- ^{§. 3. Ingrosser.} mise-taking, other than by Demise, Grant, or Lease of Land; or Tithe any Corn growing in the Fields, or any other Corn, Grain, Butter, Cheese, Fish, or other dead Victuals, with Intent to sell the same again, shall be taken an unlawful Ingrosser.
- 5 E. 6. c. 14. '4. Any Person thereof convicted by Law of the Realm, or in ^{§. 4. Penalty. 1 Offence.} Form prescribed by that Act, shall, for the first Offence, suffer Imprisonment for two Months without Bail, and shall forfeit the Value of the Goods so bought.
- 5 E. 6. c. 14. '5. For the second Offence, being thereof attainted, shall suffer ^{2 Offence.} Imprisonment by half a year, without Bail, and shall lose double the Value of the Goods so bought.
- 5 E. 6. c. 14. '6. And for the third Offence, shall be set on the Pillory where he ^{3 Offence.} inhabits; and forfeit all his Goods and Chattels, and be committed to Prison, there to remain during the King's Pleasure.
- 5 E. 6. c. 14. '7. First, buying Barley or Oats, to be made into Malt or Oat- ^{§. 5. Exc., tion.} meal, not by forestalling; or Secondly, buying, (not by forestalling) by Fishmongers, Butchers, or Poulterers, Things belonging to their Trades, being sold again by Retail at reasonable Prices. Thirdly, Taking Corn, Cattle, Butter, Cheese upon Reservation in Lease. Fourthly, Inn-holders, buying Wine or Victuals, and selling them by Retail in their Houses, or to their Neighbours for Sustenance, at reasonable Prices. Fifthly, Buying of dry'd Fish, &c. not forestall'd, and sold at reasonable Prices. Sixthly, a Badger, Lader, Kidder or Carrier, being licensed by three Justices where he dwells, buying Corn, Fish, Butter or Cheese, he selling the same within one Month in Fair or Market, or to a Victualler, or other Person for Provision for the House; the same being bought without forestalling. Seventhly, Provision for a City, Town Corporate, or Victualling for Ships or Forts, without forestalling, shall not be adjudged Offences.
- 5 E. 6. c. 14. '8. A Man buying Corn for Change of Seed, and not bringing so much to the Market, shall forfeit the double Value thereof.

- §. 6. *Who may enquire.* 9. The Justice of Peace at Sessions, shall enquire, hear and determine these Offences by *Inquisition, Bill, Presentment or Information* before them exhibited, and by Examination of *two lawful Witnesses*, or by any other Ways or Means in their Discretion, and to make Process, as if they were indicted by Inquisition or Verdict, and upon Conviction, by Information or Suit at any other Prosecution, to make *Estreats* of the King's Part, as in other Cases, and to award Execution for the Plaintiff, or Informer, by *Fieri facias*, or *Capias*, as the King's Justices may do, and if the Conviction be; for the King, then the whole Forfeiture to be estreated. 5 E. 6. c. 14
- §. 7. *Prosecution.* 10. *Forestalling of Corn*, vide *Corn*. 5 E. 6. c. 14
 11. No Person shall be impeached on this Act, if not sued within *two Years* after the Offence. 5 E. 6. c. 14
12. Any Person living within a *Mile of the Sea*, may buy *Fish*, 5 E. 6. c. 14
 fresh or salted, selling the same again at reasonable Prices.
13. *Forestalling Cattle*, vide *Cattle*. 5 E. 6. c. 14
14. The Statute of 5 E. 6. 12. shall not extend to *Wines, Oils, Sugar, Spices, Currans*, nor other foreign Victuals brought into *England* from beyond the Seas, *Fish* and *Salt* only excepted. 5 E. 6. c. 14
- §. 8. *London.* 15. The Statute of 3 & 4 E. 6. 21. & 5 & 6 E. 6. 14. shall 21 Jac. 22.
 not extend to Freemen of *London* buying *Butter* and *Cheese*, and selling the same again in *London* Liberties, *Southwark* and *Westminster*.
16. If Justices of Peace shall declare in their open Sessions the 21 Jac. 22.
Traders in Butter and Cheese shall forbear to buy; if they shall not forbear, during such Restraint, they shall not be exempted from the Penalties of these Laws.
- §. 9. *Licences. Badger.* 17. No *Drover, Badger, Lader, Kidder, Carrier, Buyer* or 5 El. 12.
Transporter of Corn or Grain, Butter and Cheese, shall be allowed but in the open and general Quarter-Sessions of the Peace, of the County where the Party dwells, and dwelt three Years together before the Teste of his *Licence*; and none but such as *are or have been married*, and such as are at the Time of their Licence *Householders*, and not *Servants or Retainers*, and of the Age of *thirty Years* at least, and shall be *licenced only for one Year*.
18. Note, a *Woman* can have no such Licence, for the Statute Crom. 72.
 speaks only of a *Man*, and he that hath such Licence shall not sell by his Servant.
19. The Licences shall bear Date the Day and Place of the Sessions, and shall be signed and sealed with the proper Hand and Seal 5 El. 12.
 of *three Justices* then present, *Quorum unus*, upon Pain that he that takes a Licence contrary to that Statute, shall forfeit 5 *l.* to the King.
20. The Justices in Sessions shall take *Bond and Surety* by their 5 El. 12.
 Discretion; that the Persons licenced do not *forestal, ingross*, or do any Thing contrary to 5 E. 6. 14. The Clerk or his Deputy, and none other shall write them, for which Licence he shall pay 12 *d.* at most, for the Recognizance 4 *d.* at most; for which Fee the Clerk shall keep a Register of the Names, &c. and bring it to the Sessions.
21. No Person shall by Authority of such Licence buy *Corn* or 5 El. 12.
Grain out of open Fair or Market, unless he be thereunto licensed, and that by special Words in his Licence so to do, or forfeit 5 *l.*

5 El. 12. ' 22. The Justices of Peace in their Quarter-Sessions shall hear ^{§. 10. Hear and determine.} and determine the Offences against that Act; by Inquisition, Presentment, Bill, or Information, before them exhibited; and by Examination of two Witnesses, or by another lawful Means by their Discretion, and may make Process, as if they were indicted. And upon Conviction, by Information of any other than the King, they may extract the King's Moiety as in other Cases, and to make Execution for the other Moiety for the Informer by *Fieri facias* or *Capias*, as in the Courts at *Westminster*; and if the Conviction be at the King's Suit only, he shall have the whole Forfeitures.

5 El. 12. ' 23. That Act shall not prejudice Corporations in their Purveyance, nor extend to the Counties of *Westmorland*, *Cumberland*, *Lancaster*, *Chester*, nor *York*.

1 Jac. 22. ' 24. No Person shall *regrate* or *ingross* any *Oaken Bark*, before ^{Bark} it be stripped or after, to the Intent to sell the same again, upon Pain to forfeit the Bark.

1 Jac. 22. ' 25. No Person shall forestal any *Hide* coming to a Fair or Market, ^{Hides} or buy any Hide but in a Fair or Market, except of the Owner who killed the Beast, to be spent in his own House, upon Pain to forfeit for every Hide 6 s. 8 d.

Where a Man buys Meal and converts it into Starch, he is no *Engrosser*, because 'tis not the same but altered by a Trade, but if he buys Corn and converts it into Meal with an Intent to sell it again in the same Market, he is an *Engrosser*, because it remains Corn still.

Fishmongers, Poulterers, and Butchers, are not within this Law; if they buy what belongs to their respective Trades, but if they buy with an Intent to sell again contrary to Law, they are punishable; nor Inn-holders nor Victuallers buying Wine or any Thing for the Sustenance of Man. *Cro. Car.* 381. 1 *Roll. Rep.* 134.

Forest. See *Hunting*.

Forfeiture for Felony. See *cap.* 163.

Forging. See *Felony*.

Forgery. See *cap.* 40.

C H A P. XLVI. Vide XXIII.

Games.

1 Carol. 1. THERE shall be no meeting of People out of their own Parishes ^{§. 1. Sunday} on the Lords Day (or Sunday) for any Sport or Pastimes whatsoever; nor any Bear-baiting, or Bull-baiting, Enterludes, Common Plays, or other unlawful Exercises or Pastimes, used by any within their own Parishes: upon Pain that every Person offending in any the Premises do forfeit for every Offence three Shillings four Pence, to be employed to the Use of the Poor of the same Parish where the Offence shall be committed. And any one Justice of Peace of

of the County (or the Chief Officer of any City, Borough, or Town Corporate) upon his or their View, or Confession of the Party, or Proof of any one Witness by Oath, shall give Warrant under his Hand and Seal to the Constables or Church-wardens of the Parish where the Offence shall be committed, to levy the said Penalty by Distress, and Sale of the Offenders Goods, rendring them the Overplus :) and in Default of Distress, the Offenders to be set in the Stocks by the Space of three Hours: Provided that none be impeached by this Act, except he be called in Question within one Month next after the said Offence committed, 1 Caroli Regis, cap. 1. & 3 Car. c. 4.

King James, Anno 1618. publicly declared to his Subjects, these Recreations or Exercises hereunder mentioned to be lawful; that is to say, Dancing of Men or Women, Archery, Leaping, Vaulting, May-games, Whitsun Ales, Morris-Dances, and setting up May-Poles, and other Sports therewith used: And commanded that no such honest Mirth, or Recreation should be forbidden to his Subjects upon the Sunday or Holy-days, after Divine Service (sc. Evening Prayer) ended. Restraining and barring notwithstanding from this Liberty any Recusants, and all such as absent themselves from Church upon those Days; commanding each Parish by it self to use these Recreations, and only after Evening Prayer ended: And prohibiting all unlawful Games to be used upon Sunday, Bear-baiting, Bull-baiting, Enterludes, and Bowling by the meaner Sort.

All which King Charles the First, by publick Declaration, Anno 1633. confirmed; allowing farther the Feasts of the Dedication of Churches, commonly called Wakes, and all Manlike Exercises to be there used with all Freedom, yet so as none bring any Weapons thither: Commanding all Justices of Peace to look that no Disorder be at such Wakes, but to be prevented or punished, &c.

The Statute of 12 R. 2. c. 6. is repealed by 21 Jac. c. 28. and by the Statute of 33 H. c. 9. all Statutes for the Restraints of unlawful Games, as touching the Penalties and Forfeitures of the same are repealed; so that now the Statute of 33 H. 8. c. 9. as to any Penalties is in Force, and such Games as be prohibited by 11 H. 4. c. 4. & 33 H. 8. c. 9. or unlawful, viz. Tables, Tennis, Footbal, Coits, Dice, Bowls, Cloyse-cales, half Bowls, Cards, Logats; so that the Offences relating to Games are upon these Accounts: First, Games are by those Statutes said to be unlawful in Respect of the Condition of the Persons playing, such are Servants and Labourers in Husbandry, &c. by 12 R. 2. c. 6. 11 H. 4. c. 4. & 33 H. 8. c. 9. Secondly, Persons keeping Houses or Places for those Games for Lucre, Gain, or Living. Thirdly, Persons haunting such Houses for those Games sake, out of which Cases Gaming is lawful, and not only the Games before mentioned, are in Cases and Circumstances aforesaid unlawful; but any new Game to be invented, if used by Persons of the mean Condition aforesaid, or used and kept by Persons for Game, Lucre and Living are unlawful by 33 H. 8. c. 9. that is, as to some Persons using them, and the Places where used, as being to such Persons, and in such Places, Means of Idleness, Debauchery, and other grievous Mischiefs.

The Punishment of Players at Dice, &c. by the civil Law, besides infamy, avoiding of the Contract and Security for any Money so won, and Restitution of the Thing so obtained, was, and is Arbitrary. See Althusius Dicaeologie p. 417. l. 26.

P. 3 H. 8. 9. Every Justice of Peace may from Time to Time (as well within ^{§ 3.}
 3 Just. 64. Liberties, as without) enter into any common House or Place where ^{Search.}
 Players 5. any Playing at Dice, Tables, Cards, Bowls, Coyts, Cales, Logats,
 * 12 R. 2. Shove-groat, Tennis, Casting the Stone, * Foot-ball, or other un-
 c. 6. lawful Game, now invented, or hereafter to be invented, shall be
 Lam. 196. suspected to be used; and may arrest the Keepers of such Places, and
 imprison them till they find Sureties by Recognizance no longer to
 occupy any such House, Play, Game, Alley, or Place.

Yet it was resolved in 3 Jac. That if the Guests in any Inn or Ta- ^{§ 3.}
 vern, call for a Pair of Dice or Tables, and for their Recreations ^{Places.}
 play with them, or if any Neighbours play at Bowls for their Recre-
 ations, or the like, that these are not within the Statute of 33 H. 8.
 c. 9. for the Statute consists of two Parts. 1. That no Person shall
 for his or their Gain, &c. So that although these Games are used in
 any Inns, Taverns, or other Houses, if the House be not kept for Ga-
 ming, Lucre or Gain, but they play only for Recreation, and for no
 Gain to the Owner of the House, this is not within the Statute, nor is
 such Person that plays in such House that is not kept for Lucre or Gain,
 within the Penalty of that Law.

33 H. 8. c. 9. Also he may arrest and imprison (without Bail) the Players till they
 be bound by themselves; or with Sureties, by Recognizance to the
 King's Use, no more to play at, or to haunt any of the said Places
 or Games. *Ibid.*

The said Statute of 33 H. 8. prohibited all Manner of Persons to
 play at any unlawful Game in any common House, Alley, or Place;
 except the Keeper of such House or Place have a Placard, contain-
 ing what Games shall there be used, as also what Persons shall play
 thereat; and then such Persons may play there, &c.

Also the said Statute prohibiteth all Artificers, Husbandmen, La-
 bourers, Marines, Fishermen and Watermen, and all Apprentices and
 Servants whatsoever, to play at any unlawful Game, in any Place,
 or at any Time, except in Christmas Time only and in their Houses,
 or Servants in their Masters Houses, and by their Masters Licence;
 or Serving Men within the Precinct of their Master's House, Garden,
 or Orchard, and by their Masters License. Also no Manner of
 Person shall at any Time play at Bowls in any open Places out ^{Bowls.}
 of his Garden or Orchard. P. 4.

And the said Statute makes all Games almost unlawful, save Shoot-
 ing in the long Bow, that being a great Defence for the Realm, and
 a meet Exercise for all manner of Persons to use, and a Means to
 prevent or divert Men from other unlawful, crafty, and deceitful
 Games, and from the Inordinate and common Haunting of Alehouses
 and Tipling.

Every Justice of Peace finding or knowing any Person to exercise
 or use any of the aforementioned unlawful Games (contrary to this Sta-
 tute of 23 H. 8. cap. 9.) may commit him to Gaol, there to remain
 without Bail, until he become bound (in such Sum of Money as he
 the said Justice shall think reasonable, that he shall not from hence-
 forth use such unlawful Games. *Ibid.*

33 H. 8. The Penalties for Artificers, Husbandmen, Labourers, Apprenti- ^{§ 4.}
 c. 9. ces, Servants at Husbandry, Journyman, or Servant of Artificers, ^{Penalties.}
 Mariners, Fishermen, Watermen, or Serving Men, Playing at Ta-
 bles, Tennis, Dice, Cards, Bowls, Clash, &c. out of Christmas, is
 forty

forty Shillings, and in Christmas Time, to play in their Masters House or Presence.

The Penalty for keeping an House of unlawful Games, is forty Shillings per diem. 33 H. 8. cap. 9.

The Penalty for resorting thither, or playing there, is six Shillings and eight Pence for every Time. Ibid.

Mayors, Sheriffs, Constables, and Head Officers, &c. shall once a Month search Places suspected, or forfeit for every Month forty Shillings. Ibid.

§. 5. All Mayors, &c. and Head Officers, shall four Times every Year, Proclaim this Statute in the Market. And all Justices of Peace shall Proclaim the same in their Sessions. Ibid.

All Suits upon the Statutes of unlawful Games, shall be heard, sued, and prosecuted, at the Assizes or Sessions of the County where the Offence is committed, and not out of the County. 31 Eliz. c. 5.

Every License, Placard, or Grant, made to any Person for having or keeping any Bowling-Alley, Dicing-Houses, or other unlawful Games, prohibited by the Laws of the Realm, shall be void. 2 & 3 Ph. & Ma. c. 9.

§. 6. Although these Games aforesaid, are by Statute prohibited as unlawful for some Places, Persons, and Times; yet are they not unlawful or evil of themselves, but are Matters of Recreation and Pleasure, (though some of them more vain and more idle than others!) And the King by his Prerogative may tolerate and license the moderate Use of all such Games. Co. 11. 85. b.

Cards and Dice.

Note also, that playing at Cards, Dice, and the like are not prohibited by the Common Laws of this Realm, (except one be deceived by false Dice, or false Cards; and then he that is deceived, may have his Action of the Case for such Deceit; neither are they *malum in se*, or of their own Natures, for then none might be tolerated or licensed to use them; whereas the Statute doth except and tolerate certain Persons, Places and Times. And yet good Divines do hold divers of these Recreations to be altogether unlawful, as being Actions wherein we neither bless God, nor look to receive a Blessing from God; nay, such as we dare not pray to God for a Blessing on them, nor on our selves in the Use thereof: But especially on the Sabbath Day all such Recreations and Games are holden unlawful. For if lawful Works be forbidden on that Day, much more unlawful Sports, (yea, such Sports and Games, which otherwise, and at other Times are lawful.) See Mai. 58. 13. B. Bailly. 400. Dr. Waller, 498. M. Per-

For the Preventing deceitful and excessive Gaming, a good Law was made 16 Car. 2. cap. 7. but the Justices have nothing to do therein.

But inquire what Games shall be said to be unlawful, other than those aforesaid, Quære, of Dancing the Morrice, or other open Dancings, Bear-baitings, Common Plays, and Fencings. All these seem to be prohibited by the Statute of 39 El. 4.

Persons who live by Gaming may be bound to their good Behaviour.

Two or more Justices may cause any Person to come before them, whom they shall have Reason to suspect hath no visible Estate, Profession, or Calling, to maintain himself, but doth for the most part support himself by Gaming: And if he cannot make it appear that the chief Part of what he expends is not got by Gaming, the Justices may require him to find Sureties for his Good Behaviour for twelve Months; and if he cannot find such Sureties, they may commit him till he can. 9 Annæ cap. 14.

And if he doth give Security, &c. and afterwards play for more ^{Playing} than 20s. at one Sitting, this is a Breach of his Good Behaviour, and ^{for more} he shall forfeit his Recognizance. ^{than 20s.} ^{is a Breach} ^{of Good Behaviour.}

This Act shall not extend to hinder any Person from Gaming in ^{King's} any of the King's Palaces during his Residence there, so as such Ga- ^{Palace:} ming be not in any House, Lodging or other Part of the Palace, the Freehold whereof is not in the Crown, and so as such Playing is for ready Money.

And no Bankrupt shall be discharged or receive any Benefit by the ^{Bankrupt} Statute 5 Geo. who shall have lost in one Day 5 l. or 100 l. in twelve Months before he became a Bankrupt either at Play or in Racing or other Pastimes, or by bearing a Share in the Stakes, Wagers, or Ad-ventures, or by betting on the Sides of such as shall play, ride, or run.

The Defendant was convicted for keeping a Cock-pit six Days; this ^{Cock-pit.} was adjudged an unlawful Gaming within the Statute, and he was fined 12 l. being 40s. *per diem*, according to the Statute 33 H. 8. tho' the Indictment was at Common Law. 3 Keb. 510.

All Securities for Money won at Play, or which shall be lent at ^{Securities} that Time and Place of such Play to any Person gaming or betting, ^{for Money} shall be void. ^{won at} ^{Play void.}

And where such Securities shall be a Charge on any Lands, they ^{Such Se-} shall enure and be to the sole Use of the Heir at Law, or to the ^{curities} Reversioner, as if they had been made to him, and the Grantor had ^{shall be to} been actually dead; and all Conveniences made for preventing such ^{the Use of} Lands from devolving upon such Person, shall be fraudulent and void. ^{the Heir at} ^{Law.}

Any Person who at one Time shall loose by Playing or Betting to ^{Loosing a-} the Value of 10 l. and shall pay or deliver it or any Part thereof, ^{bove 10 l.} may within 3 Months then next following, recover what was so lost, ^{may be re-} or any Part thereof from the Winner by Action of Debt, with Costs ^{covered of} in any Court of Record; and if the Looser shall not within that ^{the Win-} Time without Collusion sue for the same with Effect, any Stranger ^{ner within} may sue for it, and recover it with treble the Value, together with ^{3 Months.} Costs; one Moiety to the Prosecutor, and the other to the Poor of ^{A Strang-} the Parish where the Offence was done. ^{er may sue} ^{for it if the} ^{Looser will} ^{not.}

Every Person who is liable to be sued for * Money won at Play, ^{The Win-} shall answer upon Oath any Bill which shall be exhibited against him ^{ner must} for the Discovery thereof, but upon Discovery and Repayment of the ^{Answer a} Money or other Thing, the Person shall be discharged from any far- ^{Bill of Dis-} ther Punishment he may have incurred by Playing. ^{covery on} ^{Oath.}

If any Person shall by Fraud or Deceit at any Games, or bear- ^{Cheating} ing a Share in the Stakes or Wagers, or betting on the Side of the ^{at Play.} Players, win any Sum or valuable Thing, or shall at one Time win ^{or winning} above the Value of 10 l. and being convicted of *either the said Offen-* ^{above 10 l.} *ces* upon an Information or Indictment he shall forfeit five Times the ^{at one} Value of the Sum or Thing so won, to the Informer, &c. and shall ^{Time, for-} suffer corporal Punishment as if he was guilty of Perjury. ^{feits five} ^{Times the} ^{Value.}

Assaulting or Beating, or Challenging another to fight for Money ^{Challeng-} won at Play or Betting, and being convicted thereof upon Indictment ^{ing another} or Information forfeits to the Crown all his Goods and Chattels, and ^{for Money} personal Estate, and shall suffer Imprisonment for 2 Years without Bail. ^{won at} ^{Play.}

The Court was moved for Leave to file an Information against the Defendant upon an Affidavit of the Prosecutor, that he had lost 15 l. to the Defendant at one Sitting; but this was opposed, because the

Prosecutor had indicted the Defendant for the same Offence, and the Bill was found; 'tis true, the Indictment was quashed, and the Defendant was never tried upon it, but the Court would not give Leave to file an Information, because the Jury might find another Bill for the same Offence. *Mich. 9 Geo. B. R.*

Game.

*Trespassers
and to pay
full Costs.*

THE Laws made for the Preservation of the Game, may be seen ^{4 & 5} under the several Titles of *Hare, Pheasant, Partridge, &c.* but ^{W. cap. 23.} by the Statute 4 *W.* 'tis enacted that inferior *Tradesmen, Apprentices,* and other dissolute Persons neglecting their Trades and following *Hunting, Fishing,* and other Game, if sued for a wilful *Trespass,* shall pay full Costs as well as Damages.

All Statutes in Force for the Preservation of the Game not altered ^{4 & 5} or repealed by the aforesaid Statute 4 & 5 *Will.* shall be put in Ex- ^{W. cap. 23.} ecution.

Search.

Constables, &c. may by Warrant of a Justice enter and search (in Manner as by the Act 3 & 4 *Will.* against Deer-stealers) the Houses of *suspected Persons* not qualified, and if any Game shall be found, then to carry the Offender before a Justice, to whom he must give an Account how he came by the same, or if not, or doth not produce the Party of whom he bought it, or some credible Witness to make Oath of whom he bought it, the Justice shall convict him of the Offence, and he shall forfeit for every Hare, Partridge, &c. or other Game, not under 5 *s.* nor exceeding 20 *s.* one Moiety to the Informer and the other to the Poor of the Parish where the Offence was done, to be levied by Warrant, &c. by Distress and Sale, &c. and for Default of a Distress, to be sent to the House of Correction for any Time not exceeding a Month, nor less than 10 Days, there to be whipt and kept at hard Labour.

*How and
Fortridge*

*Dogs,
Nets, &c.*

He who is not qualified and doth keep or use any *Bows, Grey-^{3 Geo.} hounds, Setting-Dogs, Coney-Dogs, Ferrets, Lurchers, Ferrets. c. 11.* *Hays, Nets, Tunnels, Low-bells, Hare-pipes, Snares* or other Instruments to destroy the Game, and shall be convicted as aforesaid, shall suffer the Penalties as aforesaid, and if the Person charged doth not give Evidence to the Justice of his Innocence, he shall be convicted thereof in Manner as the first Person charged therewith, and so from one Person to another till the first Offender is found.

Lords of Manors and those to whom they give Authority, may resist Offenders in the Night-time in their respective Manors and Royalties, as if the Fact had been done in any ancient Chase, Park, or Warren.

*Nets to
take Fish.*

No Person shall keep any Net, &c. or other Engine for taking Fish, other than the Makers for Sale or Owners or Occupiers of a Fishery; if they do, such Owners, &c. may either seize, or give Authority to others to seize and keep to their Use any such Engine of any Person fishing in a River, without the Consent of the Owner or Occupier.

Search.

Any Person by Warrant from a Justice may search the Houses and other Places of Persons prohibited and suspected to have such Engines, and seize and keep them to their Use, or destroy them.

This shall not extend to abridge Fishermen or their Apprentices to fish in navigable Rivers with lawful Nets and Engines.

No *Certiorari* shall be allowed, unless the Party convicted shall, before the Allowance, enter into a Bond to the Prosecutor in the Sum of 50 *l.* with Sureties to be approved by the Justice before whom convicted to pay the Prosecutor his full Costs, on Oath, within a Month after Conviction confirmed, or *Procedendo* allowed.

Offenders punished by this Act shall not incur the Penalty of any other Law for the same Offence.

He who is prosecuted for doing any Thing in Execution of this Statute may plead the General Issue, and give this Act and any Special Matter in Evidence; and if the Plaintiff is cast, or discontinued, or is nonsuit, the Defendant shall have treble Costs.

No Person shall burn on any Hills, &c. or Waste, between 22 of February and 24th of June, any Greg, Ling, Heath, Furze, &c. if he doth he shall be sent to the House of Correction for any Time not exceeding a Month, nor less than ten Days, there to be whipp'd and kept to hard Labour; this is for the better Preservation of Heath-cocks, &c.

5 Ann.
cap. 14.
made per-
petual by
9 Ann.
cap. 25.

Any Higler, Chapman, Carrier, Alehouse-keeper, Inn-keeper or Victualler, having in their Custody any Hare, Partridge, &c. (unless sent by the Carrier by some Person qualified) shall be brought before a Justice where the Offence was done; and upon View of the Hare, &c. or Oath made of the Fact, shall forfeit for every Hare, &c. 5 *l.* to the Informer and to the Poor, to be levied by Distress, by Warrant of a Justice before whom the Offender was convicted, and for Want of such Distress to be committed to the House of Correction for three Months without Bail for the first Offence, and four Months for every other Offence.

The Conviction must be within three Months after the Offence, and before a *Certiorari* shall be allowed, the Offender shall be bound in 50 *l.* to the Prosecutor, with sufficient Sureties conditioned to pay him full Costs, to be ascertained on Oath, within fourteen Days after Conviction confirmed, or *Procedendo* granted; and in Default thereof the Justice, &c. may proceed to execute the Conviction.

Any Person who shall destroy, sell, or buy a Hare, Pheasant, &c. and shall within three Months discover any Higler, Chapman, Inn or Alehouse-keeper, who hath bought, sold, or had the same in his Possession, so as one may be convicted of the said Offence, shall be discharged himself of the Penalties, and have the same Benefit as other Informers.

Person not qualified, and keeping Grey-hound, Lurcher, Setting-dog, &c. or any Engine to destroy the Game, and being thereof convicted before a Justice, &c. shall forfeit 5 *l.* half to the Informer and the other to the Poor, to be levied by Distress and Sale, by Warrant of the Justice before whom convicted, and for Want of Distress to be sent to the House of Correction for three Months for the first Offence, and for every other Offence four Months.

Justices within their Jurisdiction, and Lords of Manors within their respective Manors, may take away any Hare, Pheasant, &c. or other Game, from such Higler, &c. or from any one not qualified to kill it, and also to take away the Dogs, Nets and Engines to their own Use.

Lord of a Manor may, under his Hand and Seal, empower a Game-keeper to kill any Game; but if under Colour of such Power he kill

and sell, or dispose of it without Consent of his Lord, and shall upon his Complaint be convicted thereof before a Justice, he shall be sent to the House of Correction for three Months, and kept to hard Labour.

Heath in
Sher-
wood
Forrest.

No Person shall cut Ling, Heath or Brakes, to burn them to Ashes in *Sherwood Forrest*, or in any Waste or Land in the County of *Nottingham*, without License from the Owner of the Soil, under the Penalty of 10s. and the Person buying such Ashes, forfeits 10s. per Peck to the Poor and the Informer; and the Offender being convicted before a Justice, upon Oath, and not paying the Penalties, shall be committed to the House of Correction for a Month, and there kept to hard Labour, unless the Penalties are sooner paid.

The Officers of the Forrest or the Owners of Lands, &c. may take away to their own Use the Instruments used for Cutting, &c.

Game-
keeper.

By this Statute, that of 5 *Anna*, which was temporary, is made 9 *Ann.* perpetual; and further enacted, that a Lord of a Manor shall appoint ^{cap. 25.} but one Game-keeper in one Manor, with Power to kill the Game, and his Name shall be entered with the Clerk of the Peace without Fee, who shall give him a *Certificate* thereof, paying 1s. and if his Name is not entered, and he kill Game, and is not qualified by Law

Hare sold
by one not
qualified.
Pheasant,
Partridge,
* viz. 5l.

so to do, or if any other, not being qualified, shall sell or expose to Sale any Hare, Pheasant or Partridge, Moor-heath, Game or Growse, he shall for every Offence incur such Forfeiture as inflicted by the Statute 5 *Anna*, against * *Higlers*, &c. for buying or selling Game, and to be recovered in such Manner as provided by that Act.

What shall
be Exposed
to Sale.

If a Hare shall be found in the Shop, House, or Possession of a Person not qualified in his own Right to kill the Game, or being entitled to do it by some qualified Person, the same shall be adjudged an Exposing to Sale.

Hare killed
in the
Night-
time.

He who kills or destroys a Hare, &c. in the Night-time, shall for every Offence incur such Forfeitures as aforesaid, and to be recovered as aforesaid.

Wild Fowl.

Any Person between 1 *July* and 1 *September*, in any Year, driving by *Hayes*, *Tunnels* or *Nets*, and taking *Wild-duck*, *Teal*, *Widgeon*, or any other *Water Fowl*, in Places of Resort for Wild Fowl in the Molting-time, and being convicted thereof before one Justice where the Offence was done, and by the Oath of one Witness, shall forfeit 5s. for every Fowl to the Informer, and to the Poor, &c. to be levied by Warrant, &c. by Distress and Sale, &c. and for Want of Distress to be committed to the House of Correction, not exceeding one Month, nor less than fourteen Days, to be whipp'd and kept to hard Labour, and the Justice shall cause such *Nets*, &c. to be seized and destroyed in his Presence.

Game-
keeper.

After 10 *July* 1717, Lord or Lady of a Manor shall not appoint; G. c. 11.

any Game-keeper with Power to take or kill any Hare, &c. or other Game, unless such Person is qualified so to do by Law, or be truly a Servant to such Lord or Lady, or be immediately employed by them to kill the Game for their sole Use; and no Lord of a Manor, &c. shall give Authority to any Person not qualified by Law, to keep or use any *Greyhound*, *Setting-dog*, *Hayes*, *Lurchers*, &c. *Guns*, or other Engines, to kill the Game; and any Person not being qualified, or not being truly a Servant to the Lord of the Manor, or not immediately employed to take or kill the Game for his sole Use, who under Pretence of any Deputation, &c. to him granted by such Lord, shall take or kill any Game, or use any *Greyhounds*, &c. be-
ing

Dogs,
Guns.

ing convicted thereof, shall for every Offence incur such Forfeitures, and to be recovered and employed, as by the Statute 5 *Annae*, the said Act, and that of 9 *Annae*; and all other Laws now in Force for the Preservation of the Game, not hereby altered, shall remain in Force.

8 Geo.
cap. 19.

Where a Person shall for any Offence to be committed hereafter against any Law now in Being for the better Preservation of the Game, be liable to any pecuniary Penalty, upon a Conviction before a Justice, any other Person whatsoever may proceed to incur the said Penalty, either by Conviction before the Justice, or may sue for the same by Action of Debt, in any Court of Record; and if the Plaintiff recover, he shall have double Costs.

Such Suit must be brought before the End of the next Term after the Offence done; but the Offender shall not be doubly charged for the same Offence; if he is, he may plead the former Prosecution pending, or the Conviction and Judgment thereon.

The Defendant was convicted upon the Statute 5 *Annae*, for Keeping a Greyhound and killing four Hares, not being qualified; but it was by his own Confession, and not upon the Oath of one credible Witness, as that Statute directs; now the Forfeiture of 5 *l.* relating to the Conviction, if that is not according to the Statute, then nothing is forfeited; and the Justice of Peace having no Power in this Case but what he derives from the Statute, therefore it ought to be pursued, especially where 'tis Penal.

But adjudged, that the * Confession of the Offender is within the * *See Tit.* Intention, tho' not within the Letter of the Act; and 'tis the strongest Perjury. Evidence against the Person confessing, therefore where a Justice convicts upon a stronger Evidence than is required by the Statute, such Conviction must be good. *Hill. 9 Geo. B. R. The King versus Gage.*

Another was convicted for keeping Dogs, Nets, Ferrets, &c. to catch Conies, not being qualified, and by Virtue of a Warrant his Goods were distrained for the Forfeiture, and a Town-Clerk granted a Replevin to take them out of the Possession of the Constable; the Court would not set aside the Replevin, but made a Rule for the Town-Clerk to shew Cause why an Attachment should not go. *Mich. 9 Geo.*

C H A P. XLVII. Vide XXIV.

Guns.

Dyer 254.
Co. 11. 87.
33 H. 8. 6.
* Co. 5. 72.
P. 1, 2, 6.

Whoever shall shoot in, carry, keep, use, or have in his House, §. 1.
or elsewhere, any Guns, Cross-bows, (* Dags, Pistols, or *One Just.*
Stone-bows, contrary to the Statute of 33 H. 8. 6. every Person seeing
or knowing this, may arrest or attach the Offenders, and bring or convey them to the next Justice of Peace in the same County (where they were found Offending;) which Justice, upon due Examination and Proof thereof, before him had or made, by his Discretion, may commit the Offenders to the Gaol, there to remain until they have paid the Penalty of the Statute, scil. Ten Pounds.

The Effect and Particulars of which Statute be as followeth.

1. No

1. No Person may shoot in, or keep any Gun, Dag, Pistol, Cross-bow, Hagbut, Demi-hake, or Stone-bow, except he hath *per Ann. 100 l.* ^{P. 1. Co. 5. 72.} in Lands, Tenements, Fees, Annuities, or Offices, *in his own Right, or in the Right of his Wife, or any other in Trust for him, or forfeit ten Pounds for every Time.*

2. No Person may shoot in, carry, keep, use, or have any Hand-Gun under one whole Yard in Length, in the Stock and Gun, nor any other Gun (* Dag or Pistol) that shall be under three Quarters of a Yard in Length, *or forfeit ten Pounds for every Time.* ^{P. 2. Co. 5. 72.}

Every Person having in Land, &c. *100 l. per Annum*, may seize and take from the Offender every Gun (Dag and Pistol) shorter than is before limited, and every Cross-bow (or Stone-bow) from him that hath not *100 l. per Annum*, and may keep such Bow; but must break such Guns within twenty Days next after such Seizure, *or forfeit forty Shillings for every Gun not broken, and may keep the Gun so broken.*

§. 2. But now, by the Statute made 3 Jac. cap. 13, if any Person, not having Lands, &c. of the yearly Value of forty Pounds, or not worth in Goods Two hundred Pounds, shall use any Gun, Bow, or Cross-bow, to kill any Deer or Conies, or shall keep any Buck-stall, or Engine, Hays, Gate-nets, Purse-nets, Ferrets, or Coney-dogs, (except such Persons shall have any Ground inclosed, used for the Keeping of Deer or Conies, &c. or be Keepers or Warreners) any Person having in Lands an hundred Pounds by the Year in Fee, or for Life, may take from such Malefactors, and to his own Use for ever keep such Guns, Bows, Cross-bows, Buck-stalls, or Engines, Hays, Gate-nets, Purse-nets, Ferrets and Coney-Dogs.

3. No Person may carry in his Journey any Gun (Dag, or Pistol) charged, or Bow bent, but only in Time and Service of War, or in going to or from Musters) except he hath *per Annum 100 l.* in Lands, &c. *Or shall forfeit ten Pounds.* ^{P. 3. Lamb. 462.}

4. No Person may shoot in any Gun, &c. within any City, Borough or Market-Town, nor within one Quarter of a Mile of any City, Borough or Market-Town, except for the Defence of his Person, or House, or at a But, or Bank of the Earth, and in a Place convenient: *Or if he do, shall forfeit ten Pounds.* ^{P. 4.}

5. The Master may not command his Servant to shoot in any Gun or Cross-bow, &c. except at a But, or Bank of the Earth, or in Time of War: *Or if he do, shall forfeit ten Pounds.* ^{P. 5.}

Except notwithstanding out of this Statute, Shooting at a But or Bank of Earth by Serving-men, whose Masters are inabled by Statute, and by Inhabitants of Cities, Boroughs and Market-Towns; except also all Lords, Knights, Esquires, and Gentlemen, and the Inhabitants of every City, Borough and Market-Town; as also all Persons dwelling alone, or near the Sea, and Makers and Sellers of Guns, &c. These may keep Guns, &c. of the Length aforesaid, in their Houses, (yet only to use and shoot therein at a But, or Bank of Earth :) And Persons having lawful Placards, they may shoot according to such Placard or Licence. See other Exceptions there. ^{P. 7, 8, 9.}

Hawks-
meat.

Any Person keeping Hawks, having Licence from the Sessions to shoot at Crows, &c. for Hawks-meat only, may kill Hawks-meat, so as he do at the same Quarter-Sessions become bound by Recognizance in twenty Pounds, not to shoot at any Fowl prohibited by that Law; nor within Six hundred Paces of a Hernery or Pigeon-house, nor in any

any Forrest, Chace, or Park, whereof his Majesty is not Owner.

1 Jac. 27.

But forasmuch as in these former Cases, the Justice of Peace hath the whole Matter committed to himself, and that such Offenders remain convict upon his Examination and Proof of Witness made before him; therefore he ought to be circumspect in his Examination, as also in his *Mittimus*. And farther, to make a Record of the Matter, (in Writing under his Hand) and also to send the *Estreet* of it into the *Exchequer*, whereby the King's Duty may be levied.

No Person under the Degree of a Lord of Parliament, and not having 100 l. per Annum, shall shoot in any Hand-Gun, in any City or Town, at any Fowl or Mark upon any Church, House, or Dovecote; nor shall any Person shoot in any Place with Hailshot, upon Pain to forfeit ten Pounds, and Imprisonment for three Months.

2 E. 6. 14.

The Form of *Mittimus* vide hic postea.

The Form of the Record see there also.

2 Ed. 6. 14.
P. 11.

All Persons which shoot in Guns (whether they be authorized to shoot or otherwise) ought to present their Names to the next Justice of Peace, who shall cause the Clerk of the Peace to record or register their Names. But *Quere* if this be now in Use. *Lamb. 296.* 'Tis altogether disused.

1 Jac. 27.
P. Pheasant.

Any two Justices of Peace may commit to the Gaol for three Months, &c. every such Person as shall shoot with any Gun, or Bow, at any Partridge, Pheasant, House-Dove, Mallard, or such Fowl, or at any Hare. See more in the Title *Partridges*. See postea *Tit. Partridges and Wild Fowl, cap. 110.*

But note, That the Sheriff, or any of his Officers, for the better executing of their Office, may carry with them Hand-Guns, Dags, or other Weapons, (invasive or defensive) notwithstanding the Statute of 33 H. 8. c. 6. Co. 5. fol. 72.

33 H. 8.
c. 6.

All Justices of Peace in their Sessions may hear and determine these Offences, so as no less Fine than ten Pounds be assessed for any such Offence; which Fine so assessed in Sessions, shall be to the King's Use only.

33 H. 8.
c. 6.

Any Person seeing, finding, or perceiving any Person to offend against the Act, may attach and arrest, and bring him before the next Justice of Peace, who shall upon due Examination and Proof, by his Discretion, commit him to the next Gaol, there to remain till the Penalties be paid; one Moiety to the King, the other to such Bringer.

If any Jury conceal the Offence, the Justices may impanel Twelve or more; who, if they find the Concealment, every one of the first Jury shall pay twenty Shillings to the King.

An Indictment will lie on the Statute 33 H. 8. cap. 6. before the Sessions, tho' this hath been formerly doubted, because, tho' the Justices have Power by the general Words of their Commission to punish Offences against the Peace, yet Shooting is not such an Offence; for 'tis only a Defect of the Qualification of the Person who shoots in a Gun.

There are several Instances of such Indictments, tho' they have been quashed for Insufficiency, as an Indictment for Keeping diverse *Tormenta* (*Anglice, Guns*) *cauentia longitudine secundum formam Statuti*, not good. 4 Mod. 49.

The

The Defendant was convicted upon the aforesaid Statute for carrying a Gun, not being qualified; but upon a *Certiorari* to remove it into *B. R.* he was discharged, and the Conviction quashed, because it was *coram nobis, &c. justiciariis Domini Regis ad pacem conseroand*, but did not say *Assignatis*. 1 *Vent.* 39. *Sid.* 419. *S. C.*

The Defendant being convicted before a Justice of Peace for Shooting with Hail-shot in an Hand-Gun, was committed until he paid the Fine of 10 *l.* one Moiety to the King the other to the Informer; and the Justice having recorded the Conviction, it was certified upon the Return of an *Habeas Corpus* into *B. R.* and there upon Debate in the Court it was adjudged, that the Statute being pursued, no Court could discharge the Defendant without paying the Forfeiture inflicted by that Act.

Gaol. See *Prison*.

Hats and Caps. See 8 *El.* 11. and 1 *Jac.* 17.

Hawkers and Pedlars.

Petty Chapmen trading without a License forfeit 12 *l.* one Moiety to the Informer, the other to the Poor, to be levied by a Warrant by Distress and Sale, &c. being convicted by Confession, or by one or more Witnesses, before one Justice, on Oath. 8 & 9 *W. 3.* cap. 24. 9 & 10 *Will. 3.* cap. 27.

Any Person so trading and refusing to shew a License to one Justice, on Demand, forfeits 5 *l.* to the Use of the Poor, being convicted as before; and upon Non-payment shall, as a Vagrant, be committed to the House of Correction.

Constables or other Officers refusing or neglecting on due Notice to aid or assist in the Execution of these Laws, forfeit 40 *s.* to the Poor and the Informer, to be levied by Distress.

Any Person may seize and detain a Hawker, &c. till he shall produce his License, and if he hath none, then till Notice is given to some Parish-Officer, who shall carry the Offender before a Justice, who shall levy the Penalty on the Goods and Wares, &c. with reasonable Charges.

Any Person trading as an Hawker, &c. and who hath not a License ready to be produced on Demand, forfeits as one trading without a License, and may be committed, and the Forfeiture levied by Distress and Sale. 3 & 4 *Ann.* cap. 4.

Makers and wholesale Traders in *English* Bone-lace, and selling the same by Wholesale, are not Hawkers. 4 *Geo.* cap. 6.

C H A P. XLVIII. *Vide* XXV.

Hawking.

§. 1. **E**very Justice of Peace may examine the Offences for Hawking or Hunting with Spaniels in eared or coddled Corn, and may bind the Offenders with good Sureties to appear at the next general Sessions of the Peace, to answer their said Offences, 33 *Eliz.* 10. It seemeth

seemeth requisite also that the Justice do bind over the Witnesses which shall discover the Offence.

Against Hawking at Pheasants or Partridges between the first Day of July and last of August, see 7 Jac. 11. *Hic Tit. Partridges.*

Hawks that be found, shall be delivered to the Sheriff. *Vide Tit. Felonies by Statute.*

Hawks, where the Taking or Concealing them is Felony. See there also.

If any Person shall take any Hawk, or the Eggs of them, out of the Woods or Ground of another, not having License so to do, he shall be imprisoned three Months, and pay the Party his treble Damages, and give Security to be of the Good Behaviour seven Years, or else lie in Prison seven Years. 5 Eliz. 31. See more largely at Hunting.

CHAP. XLIX.

Hearth-Money and Chimney-Money. The Statute 14 Car. 2. cap. 10. which gave this Duty, is repealed.

Hedges. See Trespass cap. 101.

Hides. See Leather.

CHAP. L. Vide XXVI.

Highways.

‘ **M**axima priscis temporibus Senatus diligentia fuit faciendis sar- § 1.
ciendisq; viis tam intra quam extra urbem, saith Rosinus,
‘ *Antiq. Rom. l. 7. p. 300.* And the Care of them was first commit-
‘ ted to the Censors; but they having other Employment, they chose
‘ Men whom they called *Quatuor viros viarum curandarum*; but the
‘ Number of their Ways increasing, particular Ways had particular
‘ Citizens appointed, who were called *Curatores viarum*, which Ce-
‘ sar Augustus made an ordinary Office. See *Eundem, p. 301.* to
‘ which our Surveyors now exactly answer.

Co. l. 56. *VIA*, a Way, is defined to be *Transitus à loco in locum.*

Note, That there are three Kinds of Ways, *scil.*

1. A Foot-way called *Iter, quod est jus eundi vel ambulandi hominis.* § 2.
2. A Foot-way and an Horse-way called *Actus, ab agendo*; and § 3.
this vulgarly is called a Pack or Drift-way, and is both a Foot-way
and Horse-way. *Kind.*

3. The Third, a Cart-way, &c. called *Via* or *aditus*, (and contain-
eth the other Two; and also a Cart-way,) for this is *Jus eundi, ve-*
hendi, & Vehiculum & Fumentum ducendi: And this is twofold,

U

Viz.

Via Regia, the King's Highway for all Men: 'With this only, The Justices of Peace are to meddle.
Viz. Communis Strata, belonging to a City or Town, or between Neighbours.

'*Minib. out of Ulpian maketh also three Kinds of Ways, Publicam, Privatam, & Vicinalem.*

'*Via Publica, quam Latini Regiam appellant.*

'*Vicinalis, qua in vicis est, vel qua in vicos ducit:* Ways between Street and Street, Neighbour and Neighbour, and House and House in Cities and Towns.

'*Privata est, quam agrariam dicunt:* And these are of two Sorts.

'*Vel ea qua ad agros ducit, per quam omnibus commeari licet.*

'*Vel ea qua est in agris, cui imposita est servitus, ita ut ad agrum alterius ducat.*

§. 4. *One Just. Enlarged.* Every Justice of Peace may cause the Highways to *Markets*, ^{13 E. 1. 5. See postea Tit. Robbery.} where any *Woods, Bushes, or Ditches* be, to be *enlarged and cleaned* of Bushes and Trees, (so that there be neither *Bush, Ditch, or*

Tree, within Two hundred Foot of either Side of the Way. The Statute 13 E. 1. excepteth *Albes and great Trees*; but by the Statute 5 El. all *Trees and Bushes* therein are to be cut down, &c. And this the Justices of Peace may do by Force of the Commission, the first *Assignavimus*, (Lamb. 190.) But how the Justice shall compel the same to be done, I see not, otherwise than by Admonition; and if they be not obeyed, then to present it, or cause it to be presented at the Quarter-Sessions, &c. *Vide Tit. Commission of the Peace.*

Also by the Articles of Inquisition upon the Statute of *Winchester*, (made about 34 E. 1.) it is appointed, 'That if the *Highways be not enlarged* accordingly, Inquiry shall be made where the Ways be, who ought to enlarge them, and of such as do hinder such Enlargements, as well in Parks as in other Woods. See *Poulton's Statutes at large*, fol. 93.

§. 5. *What it is.* The Highway is not only the common Tract, where Carts, Carriages, and People have gone; but if the Way be foundrous, that People cannot pass in the common Tract, and there be Outlets out of it, into the Soil of another adjoining, the People may in such Extremity use those Outlets upon another's Soil, although it be sown with Corn: Which, in such Case is the King's Highway as well as the other; for the King's Subjects must have a convenient Passage, as was resolved in a Trial at Bar against Sir Henry Duncomb, T. 10 Car. Roll's 1 Part of Abridgment, fol. 390. Therefore where a Way goes through a Man's Land, and the Owner of the Land fence it on both Sides, he by so doing hath made himself liable to repair the Highway, and keep it passable; and it is not sufficient for him to keep it in as good repair, as it was at the Time of the Inclosure; for by so doing he hath straitened the Highway.

§. 6. *Presentment.* Every Justice of Peace (upon his own Knowledge) may present in open General Sessions any Highway not sufficiently repaired and amended, within the County and Limits of his Commission. ^{5 Eliz. 15. P. Just. 69. Crom. 31.}

Every Justice of Peace (upon his own Knowledge) may present in open General Sessions, any other Default or Offence committed (within the County and Limits of his Commission) contrary to the Statutes of 2 & 3 P. & M. 8. and 5 Eliz. cap. 13. concerning the Amendment of Highways; and every such Presentment shall be of the Force of a Presentment of twelve Men, (scil. shall be a good Indictment against ^{5 Eliz. 15. Crom. 131.}

gainst the Offenders.) So that upon such Presentment the Justices at the said Sessions may assess the Fine upon such Offenders, and that in the Absence of the Party, and without calling them to it by any Process (saving to every Offender their lawful Traverse.) *Ibidem.*

2 & 3 P. & M. c. 8. So that every Justice of Peace may present, as aforesaid, all and every these Defaults following, being all contrary to the said Statutes, 5 Eliz. 13. 29 Eliz. 5. &c.

P. 1. 1. IF the Constables and Church-wardens of every Parish yearly upon the Tuesday or Wednesday in *Easter Week*, do not call together the Parishioners, and do not then also chuse Surveyors, for the amending of Highways in their Parish leading to Market-Towns, according to the Statute 2 & 3 P. & M. 8. §. 1. Surveyors.

Now they are to be chosen on the 26th of *December* every Year, per Stat. 3 & 4 Will. 3. cap. 12. And by the Statute 1 Geo. cap. 48. they are to be chosen at a Special Sessions every Year on the Third of *January*, or within fifteen Days after.

P. 2. 4. 2. If every Person having in his Occupation a *Plough-land in Tillage* or Pasture in the same Parish, or keeping there a *Plough*; or a *Draught*, do not send at every Day and Place appointed, &c. for every Draught or Plough-land, in Tillage or Pasture, one Cart furnished with necessary Tools, and two able Men with the same; and that they do such Works as they shall be appointed (by the Surveyors) by the Space of eight Hours, every of the said * six Days. §. 8. Workers.

* Indictment setting forth, that six Days inter such a Time and such a Time were limited; and that the Defendant did not work on any of the Days, was held ill; for the particular Days ought to be set forth. 1 Salk. 357.

But by the Statute 18 Eliz. 10. he that shall occupy a *Plough-land* in Tillage or Pasture, lying in several Parishes, shall be chargeable only in the Parish where he dwelleth; and he that occupieth several Plough-lands as aforesaid, in several Parishes, shall be charged in each Town or Parish where such Land lieth, *scil.* To find in each Town or Parish one Cart furnished, as aforesaid. Chargeable in the Parishes where they live.

In Places where there is no Use of Carts and Teams, but the Usage is to carry Materials on Horses Backs, or by other Kind of Carriages, then the Inhabitants using such Kind of Horses or Carriages, shall send in the same with able Persons, to work under such Directions, Forfeitures and Penalties, as by former Statutes is appointed for Carts and Teams. 22 Car. 2.

P. 13, 14. 3. If any of the Carriages shall not be thought needful by the Surveyors upon any the said Days, if then every such Person shall not send two able Men for every Cart of theirs so spared. 2 & 3 P. & M. P. 3.

P. 4. 4. If every other Householder, Cottager, or Labourer, (able to labour, and being no hired Servant by the Year) do not by himself, or one sufficient Labourer, work every of the said six Days by the Space of eight Hours, as they shall be appointed by the Surveyors. 2 & 3 P. & M.

A Cottage one describeth to be, *Casa rustica ex leviore materia excitata, arundine aut ulva palustri tecta.* Minsh. Cottage.

And he is a Cottager that dwelleth in such Cottage or House, without Land belonging to it. 4 E. 1. Stat. 1.

P. 12. 5. Note, that all Persons being chargeable but as Cottagers, yet if they be in the Subsidy five Pounds in Goods, or forty Shillings in Lands,

or above, they shall find two able Men to work every of the six Days by the Stat. 18 *El. c. 10.* But it seemeth the Justice cannot present such Default upon his own Knowledge.

§. 9.
Hedges and
Ditches.

6. If all Fences, Hedges and Ditches, next adjoining on the other Side any Highway, be not from Time to Time diked, scoured, repaired, and kept low by the Owners of the Ground. 5 *El.* and 18 *El. c. 10.*

7. If all Trees and Bushes growing in the Highways be not cut down by the Owners. 5 *El.* 18 *El. c. 10.*

And now it seemeth, that if (according to these last mentioned Statutes of 5 *El.* & 13. & 18 *El. cap. 9.*) all the Hedges and Fences be kept low, the Trees and Bushes cut down, and the Ditches scoured and repaired, it sufficeth, though the Ways be not Two hundred Foot wide on each Side.

§. 10.
Whose the
Soil is.

Note, that the King's Highway (or *Regia via*) leading either to the Market, or from Town to Town, the Freehold and Soil thereof, and the Interest of all the Trees, and other such Profits thereupon growing, do belong to the Lord of the Soil, or the Lord of the Manor. 17 *E. 3. fol. 43.* and 8 *E. 4. fol. 9.* *Br. Chemin* 10, 11. and 27 *Roll's 1 p. 392.* *H. 6. fol. 9.* *Br. Leat* 3. And therefore such Lords are chargeable to cut down the Trees and Bushes growing in such Highways; and yet by the Opinion of *Keble*, 8 *H. 7. fol. 5.* the Freehold of the Highway, and the Trees thereupon growing, are belonging to him (*scil.* to any Freeholder) that hath the Land next adjoining, *Br. Nuisance* 28. But it seemeth this must be understood of common Field-ways, or other private Ways; and not of the King's Highway. See 2 *Ed. 4. fol. 9.* 148. *Britton, fol. 111.*

Yet generally he that hath the Soil, or both Sides the Highway, shall have the Trees growing on the Highway; as was held 18 *El. B. R. Cited P. 11 Jac. Roll's 1 Part 392.* Yet the Lord of a Rape that hath several Hundreds in it, may prescribe to have the Trees growing in any Highway, within that Rape, for the Usage, to take the Trees as a Badge of Ownership; as was adjudged 11 *Jac. B. R. In the Case of Sir John Pelham.*

Note also, that he who hath Land adjoining next to the King's Highway, by the Common Law (before these Statutes) was and is chargeable, and bound of common Right, to cleanse and scour the Ditches adjoining to the said Way, *scil.* Between his Land and the Highway, without any Prescription so to do; but if another's Land lie next the Highway, then he that lies not next is not bound, but by Prescription.

Inclosure.

At *Leam* Assizes at Cambridge, Anno 1622. Sir *Ja. Ley* delivered it in his Charge, that if any Person hath made, or shall make, any Inclosure next the King's Highway, that such Person shall be charged to amend the Highway adjoining to his said Inclosure; especially where he hath inclosed on both Sides, he shall be charged with mending the whole Way between his Inclosures. And if one Man hath inclosed on the one Side or Part, and another Man on the other Side, they shall both be charged to amend the same Way; and the Parish is to be discharged.

Otherwise Highways must be sufficiently amended at the Charge of the whole Town; and it is not enough for the Inhabitants to do their full six Days Work yearly, except their Ways be all well and sufficiently

ciently repaired: For if all their said Ways be not sufficiently amended, the whole Town may be indicted therefore.

Where a Highway lies out of a Parish or Hundred in a County, the County ought of Right to repair it; and Process shall go against the whole County.

Because every Town regularly is to maintain and amend the Highways within their own Parish, except it can be proved to have been usually amended by any other Person or Town, or by the Hundred, or County, &c. Therefore if six Days Work in the Year will not serve to amend them, the Surveyors may, yea must, appoint more Days, &c.

And in the Case of Mile-end-Green, it was resolved M. 1649. that a Hamlet is not bound of common Right to repair the Highways, unless it be by special Custom; but a Village or Town is, as I have it in a MS. and you may see to the same Purpose, Style Rep. p. 163.

Also concerning the Causey (near Cambridge) called Doctor Har- Causey.vey's Causey, towards the Repair whereof Doctor Har- Causey.vey hath given eight Pounds per Annum, (payable by the Master and Fellows of Trinity-Hall in Cambridge.) Sir James Ley said, That if this eight Pounds per Annum were not sufficient to repair the said Causey, that then the Towns adjoining, within which that Causey or Way doth lie, ought to help to repair the same.

11 E. 4. 9. It is called the King's Highway, for that the King at all Times hath
9 E. 4. 9. therein Passage for himself and his People, and may punish all Nu- Highway.
2 E. 4. 9. sances therein; though otherwise the Interest thereof be in the Lord,
8 E. 4. 9. to take all the Trees, and such other Profits there growing, and to
Fitz. N.B. bring his Action for digging therein, or for any other like Trespass
113. a. there done.

P. 1. And the King (by the Common Law) may award his Commission for the Amending the Highways and Bridges throughout his Realm, so as his People may have safe Passage thereby.

8. If any chosen to be Surveyor shall * refuse the Office, or will * By Stat.
not take upon him the Execution thereof, a C. 3 P. & M. every Ju- 3 & 4
stice of Peace may present this, as aforesaid. Will. 3.
be forfeits
5 l. to be levied by Warrant and Distress, &c.

P. 8. 9. So if the Surveyors shall not within one Month after any of the former Offences committed, present every such Offence to the next Justice of Peace, 5 Eliz.

P. 10. 10. Also if the Bailiff or High Constable (who hath received an E- 6. 13.
Rast. 199. strait for the Levying of any Forfeiture upon these Statutes) shall not E- straits
c. 2. levy the same, or shall not (between the first Day of March and the and Levies
P. & M. last of April yearly) make a true Account and Payment of all Sums as he hath levied to the Constables and Church-wardens of every Parish, wherein the Offence was committed; or if the Constables and Church-wardens have not employed the same upon their Highways; it seemeth every Justice of Peace may (upon their own Knowledge) present every of these Defaults, as aforesaid.

P. 3. And if the Surveyors shall present any of the former Offences (by them to be presented) to the next Justice of Peace, within one Month next after the Offence committed; the same Justice ought to certify such Presentment at the next General Sessions, sub pena 5 l. But if the Surveyors do not make their Presentment to the Justice till after the Month, and the Justice certifieth it, this seemeth not good against the Offenders.

Every

§. 14. Every such Surveyor (for the better Amendment of the Ways with-^{3 Eliz. 13.} in the Parish) may by their Discretion take and carry away *the Rub-^{P. 3.}bish or smallest Stones of any Quarry* within their Parish, *scil. such Rubbish* as they shall find there ready digged by the Owners of the said Quarry, or otherwise by their License.

§. 15. Every such Surveyor may also (for the Use afore said, dig for and ^{ibid.} take) or cause to be digged for and taken (in the several Grounds of ^{3 & 4} any Person within the Parish, near adjoining to the Way to be amend-^{Will. 3.} ed) any *Gravel or Sand*; so as they dig in no Man's Garden, Or-^{c. 12.} chard, or Meadow, and but one only Pit, and not above ten Yards over at the most, and the same within one Month to be filled up a- gain with Earth at the Charge of the Parish.

Every such Surveyor may likewise cause Stones to be gathered upon ^{ibid.} any Man's Ground within the Parish, and the same to carry away for the Use afore said.

Every such Surveyor may cause any Water-course or Spring of ^{P. 6.} Water (being in the Highway within their Parish) to be turned into another Man's several Ditch (or Ground) next adjoining to the said Way, in such Manner as by the Discretion of the said Surveyors shall be thought meet.

§. 17. Also any two Justices of Peace, (the one being of the *Quorum*) up-^{P. 11.} on Complaint to them made by the Church-wardens of any Parish, ^{2 P. & M.} may convene before them the Bailiff and High Constables, (to whom the Clerk of the Peace or Steward of any Leet hath delivered any E- streats for the Collecting of the Fines, Forfeitures, or Amercements for the Defaults afore said) and may take their Accounts; and may compel them to pay all such Arrearages, as they shall adjudge, to the Constables and Church-wardens of the Parish where the Offence was committed; or may imprison them until they have paid such Arrearages.

Every Bailiff and High Constable upon their said Accounts shall have allowed for every Pound he shall collect and pay 8 *d.* for his own Pains, and 12 *d.* for the Fee for the Estreat delivered him.

Also it seemeth any Two such Justices of Peace, upon Complaint ^{P. 11.} to them made by the succeeding Church-wardens or Constables, may convene before them the precedent Constables and Church-wardens, and may take their Accounts, and may compel them (as afore said) to pay all Arrearages in their Hands ^{2 & 3 P. & M. 8.} *The Offences a- gainst* 18 EL. 10. *shall be heard and determined in their open Sessions.* ^{2 P. & M.} 18 EL. 10. *So that it seems they can do nothing relating to that Sta- tute, but in Sessions.*

Note, That all such Fines or Forfeitures arising in the Sessions, shall be levied by Estreats indented, made by the Clerk of the Peace, who shall Seal and Sign such Estreats, and shall deliver the one Part thereof so sealed and signed to the Bailiff or High Constable of the same Hundred, and the other Part thereof to the Constables or Church-wardens of the Parish where such Default was made; and to be delivered by the Clerk of the Peace within six Weeks after *Mi- chaelmas* yearly; the which Estreats shall be a sufficient Warrant to the said Bailiff or High Constable, to levy such Fines and Forfeitures by Distress: And all such Fines and Forfeitures shall be bestowed by the Church-wardens on the Highways in the same Parish. *All For- feitures by* 18 EL. 10. *shall be levied by the Surveyors by Distress and Sale, and the Money shall be employed on the Highway; and if they*
 2 levy

levy it not within a Year, then the Constables and Churchwardens may levy it, and shall account. 18 El. 10.

18 El. 10. Also two Justices of Peace (by the Statute 18 El. 10.) may take the Account of the Surveyors of the Ways, and of the petty Constables and Churchwardens, for all such Forfeitures (within the Statute) as they have levied. 18 El. cap. 10.

Here I thought good to move some Doubts, and desire that some Resolution may hereafter be given, for better Satisfaction; for that they be so ordinarily questioned.

What, and how much a Plough-land is, Sir Ed. Coke in his ninth Part, in *Low's Case*, and upon *Littleton*, telleth us, and saith, That a Carue or Hide of Land, or a Plough-land, which is all one, is not of any certain Content, but so much as one Plough may plough in one Year; and so in some Countries it is more, and in some other it is less (according to the Heaviness of their Soil :) And herewith agreeth Mr. Lambert, *verbo Hide*. §. 19. Queries.

35 H. 6. 9. And of the same Opinion was Judge *Prisot*, 35 H. 6. 29. where he saith, That a Carue of Land is greater in one Country than in another, for that a Plough may plough more Land in the Year in one Country than in another.

And yet some others do make a Difference between an *Hide of Land*, and a *Carue or Plough-land*: For they say that an *Hide of Land* doth contain four Plough-lands, *sc.* 480 Acres; whereas a *Carue or Plough-land* containeth but sixscore Acres; and every Plough-land or Carue is four Yard-lands, (in Latin called *Quatrina terra*) every Yard-land containeth thirty Acres. But a Plough-land or Carue of Land, is called in Latin *Carucata terra*, that is *quantum aratrum arare potest in aestivo tempore*: for which see M. Skene, *Minsb.*, and the *Surveyors Dialogue* made by John Norden, p. 59. And yet this Definition or Description of *Carucata terra* sheweth, that it is not of any certain Content.

Also a Carue of Land (or a Plough-land) may contain House, Meadow, Pasture and Wood. A Plough-land is 90 L. per Annum. p. 78. 8 W.

1. Now a Man with one Plough and five or six Horses will plough and dress seven or eightscore Acres of Land yearly, (as many do with us in the east Parts of *Cambridgeshire*) and will in Summer go usually with two Draughts or Carts; yet such Person is usually charged to the Amending of the High-ways but with one Cart furnished. And another Man dwelling in the same Town, occupieth but 40 or 50 Acres, or not so much, and keepeth but three Horses, and one Draught or Cart, and he likewise is usually charged as the former, with one Cart furnished. Whether should their two Charges for Carriages for the Highways be alike? For mine own Opinion, I think it both reasonable, and warranted by the Words of the Statute, that he that for his own private Business shall set up two Draughts or Carts, shall also for the King and Country's Services be chargeable with two Draughts or Carts, though he occupy all his Land but with one Plough.

This Matter came in Debate in B. R. M. 27. Ca. 2. upon Order made by the Justices of Peace in Middlesex, for charging several Brewers and Brickmakers living there, and using several Draughts or Carts, to send so many as they kept for the repairing of the Highways, and the Order being removed in B. R. a *Procedendo* was awarded by Hale Justice, and the whole Court, who were strongly of Opinion;

pinion, that so many Draughts as they kept, so many they ought to send, for so the Service they do will answer the Wrong and Damage by them occasioned.

§. 20.
Carriage,

2. Again, what a Draught or Carriage shall be, *sc.* with how many Horses; and whether he that keepeth but two Horses and a Cart (as many with us do) be chargeable or no: I find that a Draught for the King's Carriages heretofore hath been sometimes with two Horses, as by the Statute of *Magna Charta*, cap. 21. (the Words of the Statute are, *No Sheriff, &c.* shall take the Horses or Carts of any Person for Carriage, except he pay for one Cart with two Horses 10 *d.* by the Day, and for a Cart with three Horses 14 *d.* by the Day: And therefore I should think him who usually goeth to cart (for his own Business) with two Horses, to be chargeable to find a Cart and two Horses for the Amending of the Highways, and to carry such Loads as his two Horses are well able to draw.

3. Again, if one occupieth a Plough-Land in Pasture, *viz.* six or eightscore Acres or more of Pasture or feeding of Cattle, but keepeth neither Cart nor Plough, how shall he be charged to find a Cart or Draught that keepeth none? and yet the Words of the Statute, 2 & 3 *Ph. & Mar.* & 18 *El.* 9. seem to charge him.

4. Again, he that shall keep a Draught for Carriage, or a Plough, though he occupy little or no Land or Pasture in his own Hands, but only carteth or plougheth for other Men, whether he is not chargeable to find a Cart for the Amending the Highways. It seemeth he is: But *quære* whether he be chargeable to find two able Men with his Cart, *except he hath in his Occupation a Plough-land: Perhaps* P. 2. also he keepeth no Man.

§. 21.

No Travelling Waggon, Wain, Cart or Carriage, wherein any Burdens, Goods or Wares shall be carried (other than such Carriages as are employed in Husbandry, or manuring Land, or for carrying of Hay, Straw, Corn unthresh'd, Coal, Chalk, Timber for Shipping, Materials for building, Stones, or his Majesty's Ammunition or Artillery) shall go with above five Horses at length; and if any shall draw with a greater Number of Horses or Oxen, they shall draw in Pairs, except one Horse: And if offending, and do otherwise, the Owner shall forfeit for every Offence 40 *s.* *viz.* One third Part to the Surveyors for the High-ways, another third Part to the Overseers for the Poor, the other third Part to the Discoverer, to be levied by any Officer by Warrant of any Justice of Peace by Distress and Sale. 22 Car. 2.

§. 22.
Officers
Neglect.

Any Constable or Surveyor not putting the Acts, touching the Repair of High-ways, in Execution, or suffering Carts to pass through their Limits, otherwise than as aforesaid, shall upon Complaint to any Justice of Peace of that Place, or Division, and Proof of such Neglect, by Oath of one credible Witness, or upon View of such Justice, incur such Fine, as such Justice shall impose, not exceeding 40 *s.* to be levied as at last aforesaid. 22 Car. 2.

Resisting.

If any Person shall resist or oppose any Person employed in the due Execution of the Acts, touching High-ways, or make Rescue of any Goods distrained, being convicted in Form aforesaid, shall forfeit forty Shillings, which if he pay not within seven Days after Notice of such Conviction, any Justice of Peace residing near the Place of such Rescue or Opposition, may commit him to Gaol, till he pay the Forfeiture to the Surveyor. 22 Car. 2.

Where Lands are given for Maintenance of Causeways, Pavements, High-ways or Bridges; the Feoffees and Trustees shall let them to Farm at the best improved Value without Fine: And the Justices of Peace in their Quarter-Sessions may enquire into the Value thereof, and if they find a Neglect or Fault in the Trustees, may order the Improvement and Employment thereof (except where there be proper Visitors.) 22 Ca. 2.

Where the High-ways cannot be repaired before Midsummer-day, the same may be repaired before S. Luke's Day yearly, without incurring any Penalty. 22. Ca. 2. §. 24. Time.

All Defects of Repairs of High-ways, Causeys, Pavements or Bridges, shall be presented only in the County where they lie, and not elsewhere; and that no such Presentment or Indictment shall be removed by Certiorari, or otherwise out of the said County, till Traverse and Judgment given. 22 Car. 2. §. 25. Where presentable.

A Bridge lying between two Counties, and not known in which of those two Counties Part lies, nor who ought to repair the same, an Indictment for the same seems to be removeable by Certiorari, notwithstanding this Statute: so likewise if a Person in Respect of Lands in one County, ought to repair a Bridge or High-way in another County, ne deficeret justitia.

Note, the Statute of 14 Car. 2. as to all Clauses and Powers therein (except the making a Tax) is to continue until the End of the first Session of the next Parliament and no longer; but the Statute of 22 Car. 2. is perpetual, saving only as to the Power of Taxing. §. 26. Statutes.

The Justices of Peace have also Power in their Sessions by Indictment, to punish by Fine all Nuisances, Encroachments and Disturbances in the High-ways, as namely, §. 27.

1. The Building and erecting of Gates on the High-ways, where none have anciently been, and these as every private Person may pull down and break, in Order thereto, if it cannot be done otherwise, as was resolved in the Case of Jones and Harward, P. 6. Ca. B. R. Jones. Rep. p. 221. & Cro. 1 Part, p. 133. So the Persons so doing may by Indictment being found guilty be fined therefore, and enjoined to remove the same.

11 E. 4. 9. 2. The Encroaching on any Part of the High-way by Building, or
8 E. 4. 9. other Inclosure, the King shall have the Punishment of it, although the Soil be another's.

3. Another's Annoying thereof, by laying Carrion on the same.

4. The Overflowing the same with Water stopp'd in those Wares, or in any Man's private Grounds; whereby the publick Ways are overflowed.

5. Digging Pits in the Ways, or near them, by which Passage becomes dangerous.

27 H. 8. 26. 6. The Laying Loggs, or any Things obstructive of their Use, for which although none can have an Action, but he that hath particular and special Damage, that any one may indict, and so procure to be reformed.

And for the Northern High-ways, as York, Lincoln, &c. see the Act 15 Car. 2. cap. 1. Stat. 3. and the Act of 16 & 17 Car. 2. cap. 2.

An Act for the necessary Repairs of certain High-ways in the County of Hartford, 16 & 17 Ca. 2. 10 & 15 Car. 2. c. 1.

3 & 4 W. Constables, Headboroughs, &c. and other the Inhabitants of every
& M. c. 12. Parish, shall on the 26th Day of December yearly, make a List of
X the

the Names of the most substantial Inhabitants, and such as are legally qualified, and return it to two or more Justices of the Peace at a special Sessions, to be held for that Purpose on the 3d of *January* next following, or within 15 Days after: Out of which said Lists the Justices are, by Warrant under their Hands and Seals, to nominate one, two or more to be Surveyors of the Highways for the Year ensuing. Which Nomination shall be notified by the Constables, &c. to the Persons nominated within six Days: And if Persons so nominated shall refuse, &c. they shall forfeit 5 *l.* to be levied by Distress on their Goods, and Sale thereof by Warrant of two Justices of the Peace, which Warrant the Justices are to make upon Information of one credible Witness upon Oath; one Moiety of such Forfeiture to the Informer, and the other to the Repair of the Highways: And in such Case the Justices shall nominate some other fit Person to execute the Office, who shall upon like Notice take upon him the Office, under the same Penalty. And Constables, &c. neglecting to return such List of Names shall forfeit each 20 *s.* to be levied and employed as aforesaid.

Surveyors
nominated,
and by
return.
Penalty on
Refusal.

Obstruction to be removed. No Person shall lay in any Highway not 20 Foot broad, any Matter whereby the same may be obstructed, on Pain to forfeit 5 *s.* to be levied and disposed as aforesaid. And shall clear the Highways and cleanse their Ditches within ten Days after Notice given by any of the Surveyors, on Pain of forfeiting 5 *s.* to be disposed as before.

Roads to be viewed. Surveyors shall view the Roads, &c. and within every four Months present upon Oath to some Justice of Peace, in what Condition they find them, or incur the Penalty as in Case of refusing to execute their Office, except they have some reasonable Excuse allowed by two Justices of Peace. If any Offender, after 30 Days Notice given by the Surveyors, neglect to amend the same, the Surveyors amending the same shall be allowed such Charges by the Defaulter as the Justice shall think fit, to be levied as aforesaid.

Presentments. Justices of Peace shall once in four Months hold a Special Sessions, and summon all the Surveyors of Highways, and declare to 'em what they are to do by virtue of this or any other former Act. And the Surveyors shall upon Oath make Presentment of what Offences any are guilty. And before any Surveyor shall be discharged of his Office, he shall at some Special Sessions give an Account upon Oath of all Monies come to his Hands concerning the Highways, and how disposed; and if any be remaining in his Hands, he shall deliver it to the next Surveyors, and upon Failure shall forfeit double the Value, to be levied and disposed as aforesaid. Surveyors neglecting their Duty, shall forfeit 40 *s.*

Justices neglecting. Justice of Peace neglecting or refusing his Duty, shall forfeit five Pounds, one Moiety to the Prosecutor, the other toward Amending the Highways, to be recovered in any of his Majesty's Courts of Record, by Action of Debt, &c.

Surveyors to be reimbursed. The Surveyors giving Notice to the Justices at their Special Sessions upon Oath of what Sums they have expended in repairing the Highways, the Justices (or any two of them) may by Warrant cause an equal Rate to be made to reimburse them, according to an Act of 34 *Eliz.* entitled, *An Act for the better Relief of the Poor of this Kingdom*; and if any refuse, the same to be levied by Distress, &c.

Fines levied into the Hands of Surveyors. No Fine, Forfeiture, &c. for not repairing the Highways shall be returned into the Exchequer, or other Court; but levied into the Hands

Hands of the Surveyors, to be employed for the Amendment of such Highways: And if any Fine, &c. be levied, on one or more particular Inhabitants, upon Complaint to the Justices at their Special Sessions, or any two of them by their Warrant may cause a Rate to be made for their Re-imbursement.

3 & 4 W. & M. c. 12. If Justices at their General Quarter-Sessions shall be satisfied, that the Highways, &c. cannot be sufficiently amended without the Help of this Act, Assessments upon Persons usually ratable to the Poor, shall be made and levied by such Persons, and in such Manner as the Justices at such Sessions shall appoint; the Money so raised to be employed according to their Orders, for repairing the Highways, &c. The said Assessments, if not paid within ten Days after Demand, to be levied by Distress, rendering the Overplus, Charges deducted.

Ibid. If any Persons shall find themselves aggrieved by such Assessments, or by any Act of the Justices of Peace, the Justices of Peace at their General Quarter-Sessions shall take Order therein, which shall conclude all Parties.

Ibid. All Prosecutions for Offences against this Act shall be within six Months; nor shall any be punished by this Act, being punished for the same Offence by any former Law.

Ibid. Justices of Peace of *Middlesex* may at their Quarter-Sessions make Rates for paving *Kensington*, in such Manner as by an Act made in the second Year of their Majesty's Reign, for paving and cleansing the Streets of *London* and *Westminster*.

Ibid. Justices at their Quarter-Sessions after *Easter*, yearly, shall assess the Prices of all Land-carriage of Goods, by any common Waggoner or Carrier, and shall certify such Rates to the Chief Officer of every Market-Town; and Waggoners or Carriers taking more, shall forfeit for every Offence five Pounds, to be levied by Distress, &c. by Warrant of two Justices, to the Use of the Party grieved.

7 & 8 W. cap. 29. Where any Liberty, Precinct, or Village, have used to repair their own Highways, and have levied 6 d. in the Pound towards the Repairs, &c. and yet they are not well repaired, the Justices in Sessions may order the *whole Parish* to contribute to the Repairing.

He who hath in his Occupation *Wood-land*, or other Land to the Value of 50 l. per Annum, shall be accounted to have a Plough-Land within the several Statutes for repairing Highways.

He who pulls up, cuts down, or removes any Post, Block or Stone, Bank of Earth, or other Security, set up for securing Horse and Foot Causeys from Carts, shall forfeit for every Offence 20 s. to the Surveyors; one Moiety for the Use, and to repair the Highways, the other Moiety to the Informer; the Conviction is to be by one Witness, before one Justice of the Peace or Division, &c. or upon his View, the Forfeiture is to be levied by Distress and Sale.

8 & 9 W. cap. 16. The Justices in Sessions, or the major Part of them, being at least five, shall have Power to enlarge or widen any Highways in their respective Limits, so that the Ground to be taken in do not exceed three Yards in Breadth; and that they do not pull down any House, or take away the Ground of any Garden, Orchard, Court or Yard.

The Sessions may impanel a Jury on Oath to assess Damages to the Owner of the Ground taken in, not exceeding 25 Years Purchase, and for making Satisfaction for any new Ditch or Fence, and to any Person that may be injured by enlarging the Highways.

Which shall afterwards be a Highway. Upon Payment of the Money to the Owner of the Land, or leaving it with the Clerk of the Peace for his Use, he shall for ever be devoted of the Land, and it shall be then taken to be a publick Highway.

The Purchase Money to be raised by an Assessment. The Money to be paid for the Land, shall be raised by an Assessment on the Parishioners, who ought to repair the Highways by the Order of the Justices, and by the Overseers, &c. by Distress and Sale, &c. if not paid within ten Days after Demand, so as such Assessment do not exceed 6 d. per Pound in one Year.

The Owners upon a Precept directed to them may appear at the next Sessions. The Justices at the Request of any Person for putting the Powers of this Account in Execution, may issue out their Precepts to the Owners of such Ground, or to others intrusted in the same, to appear at the next Quarter-Sessions, and show Cause why the Highway should not be enlarged.

And may cut down any Wood or Timber. The Owner shall have Liberty within eight Months after the Ground is taken, to cut down the Wood or Timber growing thereon; and for Neglect thereof it shall be sold by the Justices, the Money to be paid to the Owner.

An Appeal lies to the Judges at the next Assizes. There lies an Appeal to the Judges at the next Assizes, who may affirm or reverse the Sessions Order; and if affirmed, may award Costs against the Appellant for Vexation and Delay, to be levied by Distress and Sale, &c.

An Appeal from an Enclosure by Writ ad quod damnum, lies to the next Sessions. Where a Highway shall be enclosed by a Writ *ad quod damnum*, any Person aggrieved may appeal to the next Quarter-Sessions after the Inquisition taken, whose Determination shall be final; and if no Appeal be made, then the Inquisition and Return, entered and recorded by the Clerk of the Peace at the Quarter-Sessions, shall be for ever binding.

Surveyors may set up a Stone where two Cross-ways meet. Justices in their Special Sessions held every four Months, may direct their Precepts to Surveyors in any Parish, where two or more Cross-ways meet, requiring them to fix a Stone or Post where such Ways join, with an Inscription in large Letters of the Name of the next Market-Town to which each of the Ways lead, they to be reimbursed, as by the Statute 3 & 4 *Willi.* is directed; (*i. e.*) upon Oath made by him at a Special Sessions what he hath disbursed. Two Justices may cause a Rate to be made on the Inhabitants, which being confirmed by the Justices at a Special Sessions, shall be collected by the Surveyor, and on Refusal of Payment, shall be levied by Distress and Sale, &c.

Neglecting to set up a Stone, &c. forfeits 10s. Surveyor neglecting to erect such Post or Stone three Months after a Precept directed and delivered to him, forfeits 10s. to be levied by Distress and Sale, by a Warrant of one Justice, which Sum shall be employed in erecting the same; and if there be any Overplus, then in mending the Cross-ways.

Surveyors to view the Roads. All Laws and Statutes concerning Highways, not hereby altered or repealed, shall be put in Execution. 1 Geo. cap 52.

And gives to the Justices an Account in Writing and on Oath, of the Condition thereof, and of the Defect of Labourers and Teams. Surveyors appointed according to the Statute 3 & 4 *Willi.* shall, within 14 Days after the Acceptance of their Office, view the Roads every four Months, or oftner, if required, by the Warrant of two Justices, together with all Nuisances and Encroachments thereon in their respective Parishes, and give an Account in Writing on Oath of the State and Condition of the Highways, and the Neglect of Labourers

bourers or Teams, &c. to the Justices, at their next *Special Sessions* to be holden for the Amendment of the Highways, and for neglecting to give such Account shall forfeit 5 l. to be levied by Distress and Sale, &c. by Warrant of two Justices, which they are to grant on the Oath of one Witness; one Moiety to the Informer, the other to repair the Highways.

Justices in their *Special Sessions* may, by Writing under their Hands and Seals, order the Reparation of such Roads as in their Division most want to be amended, and at what Time, and in what Manner it shall be done.

Surveyors must take the first and most convenient Time of the Year for repairing, &c. and, if possible, perfect it before Harvest; and summon the Teams and Labourers to come in upon such early and seasonable Days as the Year shall afford to repair, &c. as the Justices in their *Special Sessions* shall direct; and if they make no Direction or Order, then to repair such Highways as need most.

Fines or Forfeitures laid upon any Surveyor, or other Person, for not doing his Duty, and being misapplied, upon Oath thereof made before the Justices at their *Special Sessions*, the Person misapplying them shall forfeit 5 l. to the Informer to be levied by Distress and Sale; and Justices may examine upon Oath all Persons who can give an Account of any Money which ought to be applied to amend the Highways, and levy the Penalties and Forfeitures, and employ them as aforesaid.

The Quarter-Sessions may cause Assessments to be made, and Money raised, not exceeding 6 d. per Pound for one Year, for repairing Highways, tho' the six Days Work hath not been performed,

tho' the six Days Work hath not been done.

Justices in Cities, Corporations and Boroughs, are impowered to put this Act in Execution, and all former Acts relating to Highways within their respective Jurisdictions.

He who ought to scour Ditches and Water-courses near Highways, and neglecting to do it after thirty Days Notice given him by the Surveyors, or leaving the Earth of the Ditches so scoured for eight Days, and Oath being made thereof by the Surveyors at the *Special Sessions* for the Hundred, or Division, &c. shall forfeit for every Yard of Ditch not scoured, $2\text{ s. }6\text{ d.}$ and for each other Offence not exceeding 5 l. nor under 20 s. to be levied by Distress and Sale, and applied by the Surveyors to mend the Highways.

Justices in Cities and Market-Towns, may at their Quarter-Sessions appoint Scavengers for cleansing the Streets, and repairing them, &c. and order Assessments not exceeding 6 d. per Pound to defray the Charge, to be levied on the * *Occupiers* and *Owners* of Houses, *Lands*, &c. in such Cities, &c. and the Money thereby raised, shall be employed and accounted for according to the Order and Directions of the Justices; and the Assessments being allowed by them, may be levied by Warrant, &c. by Distress and Sale, if not paid within eight Days after Demand.

Lands himself, nor let them, it shall be charged on them.

Surveyor neglecting his Duty, is to forfeit 40 s. to be levied and disposed as aforesaid.

Clerk

Justice's Clerk must take nothing of a Surveyor for his Oath. Clerk or Servant of a Justice shall not take any Thing of a Surveyor for the Oath, or Accounts given in at such Special Sessions, on Pain of 10 l. to be recovered in any Court of Record.

Appeal to the Sessions. He who is aggrieved by any Thing done in Execution of this Act may apply to the Sessions, whose Order shall be final, except it be for a Neglect in scouring Ditches, and carrying away the Earth or for not carrying away Stone, Timber, Straw, or Dung left in the Highway, or for not removing Annoyances by Water-courses.

General Issue. He who is sued for any Thing done in Pursuance of this Law, may plead the general Issue, and give the Act and the special Matter in Evidence; and if the Plaintiff is cast, the Defendant shall have double Costs.

Prosecution must be within six Months. Offenders must be presented within six Months, &c. and Persons punished by this Act shall not be punished by any former Law.

Lord Mayor, &c. Lord Mayor and Justices in London, may execute their Authority in paving and cleansing the Streets as before.

Waggon for Hire must not be drawn with more than six Horses, on Forfeiture of all above six. Travelling Waggon for Hire, if drawn by more than six Horses, the Owner or Driver shall forfeit all the Horses above six, with all their Accoutrements, to the sole Use of the Person distreining them; and a Cart travelling for Hire with more than three Horses, shall forfeit all above three as aforesaid. Geo. cap 12.

What the Seizer must do. He who shall seize or distrein, must deliver the Horses to the Constable, or to some Parish Officer of the same or the next Parish, who shall keep them till the Person seizing, &c. shall prove on Oath before a Justice that the Offence was done, and then that Justice may grant his Warrant to him who hath the Horses, to deliver them to the Person who first seized them, to his sole Use, paying such Charges for keeping and securing them, as the Justice shall order.

Waggon travelling for Hire shall not be drawn with more than 3 Horses, if the Wheels are bound with Tire not 2 Inches and an half broad, or set on with Rose-headed Nails. After September, 1719. no Waggon travelling for Hire, having the Wheels bound with Tire not so broad as two Inches and an half when worn, or set on with Rose-headed Nails, shall be drawn with more than three Horses, upon Pain of Forfeiture of all the Horses above three, with all the Geers, to be seized and applied as before.

Hindring the Seizure of an Horse, shall be sent to Gaol without Bail for 3 Months. He who hinders, or attempts with Force to hinder, or otherwise, the Seizing or Carrying away any seiz'd Horse for any Forfeiture by this Act, or shall rescue it, or use any Violence to the Person seizing it, shall upon Oath, made by one or more Witnesses before a Justice, be sent to the common Goal for three Months without Bail, and forfeit 10 l. to be levied by Distress and Sale, by a Warrant of such Justice; and if the Penalty be not paid within three Days after the Distress, then the Person distreining may sell the Goods, rendring the Overplus, &c. after the Charges deducted.

Waggons about Husbandry, &c. are excepted. This Act doth not extend to Waggons employed about Husbandry, or carrying Butter, Coals, Chalk, Cheese, Corn unthreshed, Hay, Straw, or Timber; Stone, Marble, Caravans, and Carriages covered of Noblemen or Gentlemen for their private Use; or to such

such Timber, Ammunition or Artillery, as shall be for the Service of the King.

The general Issue may be pleaded by any one prosecuted, &c. ^{The general Issue may be pleaded.} and the Act, and the special Matter be given in Evidence; and if the Plaintiff be cast, the Defendant shall have full Costs.

6 Geo.
cap. 6

After the 25th of March, 1726, no Person shall carry at one Load ^{Waggons in London} in London or Westminster, or within ten Miles thereof, in Waggon or Carts, with Wheels bound with Streaks of Iron, more than 12 Sacks of Meal, each Sack containing five Bushels and no more; nor more than 12 Quarters of Malt, nor above 700 and an half of Bricks, nor more than one Chaldron of Coals, upon Pain of losing one of the Horses, and the Geers, &c. therewith used to any Person who shall seize the same, to be levied and applied to such Uses as in the former Act, 5 Geo. &c. 2.

'Tis to be observed upon the Statutes before mentioned, that Offenders ought not to be punished without being called to answer for themselves; for they have Liberty to traverse the Matter alledged against them; tho' 'tis generally held, that they cannot traverse against a Presentment made by a Justice of Peace upon his View.

And as to Nuisances on the Highways, or any other Injuries, by digging Ditches, making Cross-hedges, laying Logs of Timber, or any other Thing, which in some Measure may obstruct the Passengers; any Person may remove them at Common Law, but cannot convert the Materials to his own Use: But in such Cases no one Person can have an Action for obstructing the Highway, but the Remedy is by Presentment at the Leet, or by Indictment, unless any Man hath a particular Damage for them, he may have an Action on the Case, &c. 1 Inst. 36. ^{Roll.}

Now all Indictments relating to this Matter ought to be certain, ^{Indictment} both as to the Place from which the Way doth lead, and to the Place where it doth lead; but there is not any Necessity to shew that it leads to a Market-Town, because every Highway leads from one Market-Town to another.

But 'tis necessary to shew in what Place the Nuisance was done, and ^{Nuisance} to what Parts of the Highway it did extend, shewing how many Foot in Length and Breadth it contained; because without such Certainty the Defendant cannot make a Defence, nor the Court judge of the Greatness of the Offence, that they may the better set a Fine; therefore an Indictment for stopping a great Part of the Highway at C. is not good, because 'tis uncertain, for the Place is not sufficiently set forth.

'Tis likewise necessary to set forth, that the Way wherein the ^{Common} Nuisance was done, is a common Highway, or that it is a Foot-^{Highway} way to a Church; but then it must not set forth that 'tis a Foot-way for all the Parishioners of H. but a Foot-way generally leading to the Church of H.

As to Repairing, &c. where one is indicted for not repairing a Highway, which he ought to do by Reason of his Tenure; 'tis not sufficient to set forth that he is to repair, &c. ^{Repairing} *ratione tenuræ terræ* generally, but the Word *sua* must be added.

If a Parish is indicted for not repairing, upon Not guilty pleaded, they can give nothing in Evidence, but that the Way is in Repair; but if a particular Person is indicted, he may give in Evidence that another is to repair, &c.

A-Pre-

Present-
ments.

A Presentment, that an Highway in such a Place is in Decay thro' the Default of the Parishioners of *H.* is good, tho' no particular Person is named; but in an Indictment all of them must be charged, and not *corum uterque*.

Indictment
quashed.

An Indictment against the Inhabitants of *Mile-End* in the Parish of *S.* was quashed, because *Mile-End* is not a Parish, but an *Hamlet*; and of common Right, every * Parish where the Way lies unrepaired, is bound to repair, unless any particular Person is to do it, by Reason of Tenure, Enclosure, or otherwise. ^{* Vent. 183.}

Indictment against several Defendants for not repairing a common Foot-way, they all confessed the Indictment, and submitted to a Fine: But that did not end here, for a *Distringas* shall issue against them, and so *in infinitum*, till 'tis certified that the Way is repaired as formerly it had been when at the best. 1 *Salk.* 358.

Pre-
sentment
on a Pre-
fice on his
View.
Encroach-
ment.

The Defendant was presented at the Sessions by a Justice of Peace, ^{2 Saund. 260.} upon his View, for not repairing an High-way which he ought; for ^{Sid. 464.} that he held some Lands enclosed which were Parcel of that Way, on which he had *encroached*, to judge that he ought not to be charged for both, (*viz.*) for holding Lands enclosed, and for *encroaching* but singly for each; because he is to be charged for encroaching, so long as the Encroachment continues, and no longer; for if he lays it open, he is no longer liable to repair; but where he is charged *ratione tenurae*, (*viz.*) in Respect of his holding the Lands there, tho' he lay them open, the Charge still continues.

Clergymen
liable.

The Parson is liable to the Charge of repairing the Highways, in ^{1 Lev. 139.} Respect of the Lands and Tenements which he holds of the Church, as resolved by all the Judges; for he is liable to all publick Charges imposed by Statutes, unless particularly excepted.

Highway-Men. See Robbers.

Taking a
Highway-
man 40 l.
* That the
Highway-
man was
taken by
the Person
claiming
it, &c.

He who apprehends and prosecutes an Highway-man, so as he is ^{4 & 5 W. cap. 9.} convicted, shall within one Month after such Conviction, receive of the Sheriff of the County where the Robbery was committed 40 l. producing a * Certificate under the Hand of the Judge, before whom the Highway-man was convicted.

* Produ-
cing a Cer-
tificate
from the
Judge, or
from the
two next
Justices,
and if not
paid then,
the Sheriff

If any Person is killed in taking or pursuing a Highway-man, he or they who have a Right to administer, shall have the * 40 l. and he who takes, prosecutes and convicts him, shall have his Horse, Furniture, Money and other Goods; the King's Title, or that of the Lord of the Manor, or other Person who lent the same to the Highway-man, in any wise notwithstanding, but the Right of the Person from whom they were feloniously taken is saved.

forfeits double the Sum, with treble Costs.

A Highway-man being not in Prison, and discovering two or more Robbers, so as they may be convicted, shall have the King's Pardon for all Robberies committed before that Time; which Pardon shall be a good Bar to any Appeal.

The Streets of *London* and *Westminster* shall be deemed High- ^{6 Geo. cap. 23.} ways, and of all other Cities, Towns and Places: And all Certifi-
cates hereafter to be signed for Convictions of Robberies, shall

be * signed without Deduction or Fee, except 5 s. for Writing thereof; the Person taking more shall forfeit 40*l.* to be recovered by Action of Debt, to the Use of the Person entitled to the Certificate. ** And the Admoy paid.*

CHAP. LI.

There be also certain particular Statutes concerning Highways and Streets, as followeth.

- ²⁹ El. 19. ^{P. 19.} **T**HE Occupier of any Iron-works, for every three Loads of Coal ^{§. 1.} or Mine, and also for every Tun of Iron that he shall cause to ^{One Fee} be carried in Winter-Time by the Space of one Mile in the High- ^{Will.} ways within the Wilds of *Essex, Surrey, or Kent*, shall pay to the Justices of Peace dwelling near to the Places in that County where the Highways shall be most annoyed, or to his Assigns, 3 s. in Money; the same, in Default of Payment, to be levied by Distress by such Justice, or his Assignee, of the Goods of the Party in the said County.
- ^{P. 20.} Also such Occupier, for every 30 Loads of Cole and Mine, and for every ten Tuns of Iron carried in the said Highways, &c. shall lay one Load of Cinder, Gravel, Stone or Chalk, in Places to be appointed by such Justice, or else within eight Days after Demand, shall pay 3 s. for every such Load to the Hand of such Justices, who, upon Default of Payment, shall levy the same by the Distress, &c.
- ^{P. 2.} The said Justice of Peace shall bestow all such Sums of Money upon the Amending of the same Highways, at his Discretion.
- ³⁹ El. 19. ^{P. 22.} Two Justices of Peace, whereof one to be of the *Quorum*, which ^{Two Ju-} were present at the Sessions wherein any Person was convicted for any ^{sices.} Offence against the Statute of 39 *Eliz.* may make Warrant for levying the Forfeits thereof to any Constable, or other Officer: And they may also appoint such Ways and Means as they shall think meet, to levy the double Sums for not paying those Forfeits within 20 Days next after lawful Demand of the same by such Officer.
- ¹⁴ H. 8. ^{e. 6.} ²⁶ H. 8. ^{c. 7.} By the Assent of two Justices of the Peace, and twelve discreet ^{§. 2.} Men of the Hundred and Hundreds adjoining, any Person may make ^{Newways;} and lay out, in and over his own Land in Fee-simple, in the Wild of *Kent*, as also in the County of *Sussex*, a new High way more commodious than the old; and instead thereof may retain the Ground of the old Way in Severalty to him and his Heirs: And the same Justices and twelve Men shall within three Months certifie under their Seals such new Way into the Chancery, *sc.* the Length and Breadth of the same new Way, and other Things adjoining or concerning the same, according to their Discretion.
- Upon Petition and Difference, &c. Ordered, that the whole Parish, and not the Hamlet adjoining only, do join in the repairing the Highway about *Mile-end Green* and *Stratford*. Ord. 21. Apr. 7. Car. 1*ib.* Sess. Pac. *Middlesex.* See more in cap. *London.*
- By the Statute of 13 Car. 2. St. 2. c. 2. The King may nominate ^{§. 3.} 21 Commissioners, besides certain others thereby appointed to survey, ^{Commissio-} order ^{veri.}

order and manage the Highways, Streets, Alleys and Passages leading unto and from the Cities of London and Westminster, and the Suburbs and other Places within the present Weekly Bills of Mortality. Vide that Act.

§. 4.
Cleansing.

Every Inhabitant in London, Westminster, Suburbs and Southwark, shall twice every Week, on Wednesday and Saturday, sweep before their Houses and Buildings, and take up the Dirt ready for the Scavenger or other Officer, or else for every Offence or Neglect, forfeits 3s. 4d. 13 Car. 2. St. 2. c. 2.

If any throw, or permit to be thrown Ashes, Filth, or Annoyance before his House, Building or Wall, shall forfeit 5s. If before any Church, Church-yard, or publick Buildings, or into any Sink, or Way publick or private, but shall keep it in their Houses and Yards, until the Officers come to carry it away, or else forfeit 20s. 13 Car. 2. St. 2. c. 2.

§. 5.
Officers liable.

Churchwardens, House-keepers of White-hall, or other the King's Houses, or Noblemens Houses, shall be subject to like Penalty; so shall Users of Courts, and Porters, and Keepers of other publick Buildings. 13 Car. 2. St. 2. c. 2.

No Vessels shall be hooped, washed or cleansed in the Streets, no empty Coaches stand, nor Timber or Stones be wrought there, upon Penalty of 20s. Ibid.

§. 6.
Scavengers.

Scavengers and Officers shall come every Day (except Sundays and Holydays) and give Notice that the Parties concerned may bring out their Dust, &c. or forfeit 40s. for every Neglect.

§. 7.
Paving.

Every Householder shall pave and keep repaired the Streets before their Houses and Ground unto the Channel, or else forfeit for every Rod 20s. and 20s. every Week, until it shall be sufficiently repaired. Ibid.

Where Streets, Lanes or Alleys, have been by Custom otherwise repaired, it shall be done by such Persons as are by Custom to do it, under the Penalties aforesaid. Ibid.

§. 8.
Lights.

Every Householder next the Street, shall from Michaelmas till our Lady-day, set out Lights in Lanthorns, or otherwise in some Part of his House next the Street, or else forfeit 1s. Ibid.

§. 9.
Conviction and Penalties.

One Justice of Peace upon View, or Confession, or Oath of one Witness, may convict any of the Offences aforesaid; if Conviction be upon View, the whole Penalty to go to the Repairs; if upon Proof, then one Moiety to the Repair, the other Moiety, or as much of it as the Justice please to the Prosecutor, to be levied by the Justice's Warrant under Hand and Seal to the Constable by Distress and Sale, or for want of Distress or Payment within six Days after Notice at the House, to be sent to Gaol without Bail, until Payment. Ibid.

§. 10.
Scavengers and Rates.

In London Scavengers and Officers shall be chosen, and Rates made, as according to ancient Custom; so likewise in Westminster. 13 Car. 2. Stat. 2. cap.

In other Places and Parishes in that Act mentioned within the Limits of Bills of Mortality on Tuesday or Wednesday in Easter Week, the Constables, Churchwardens, Overseers, and Surveyors, giving Notice, and calling such Inhabitants that have served that Office, shall chuse two Tradesmen to be Scavengers; who being allowed under the Hand of any two Justices, shall within seven Days take the Office, or pay 20l. and within seven Days after such Refusal, they shall in like Manner chuse another, who shall accept or pay 20l.

which

which Penalties to be levied by Distress and Sale, and for want of Distress or Payment within six Days after Notice at his House, to be sent to Gaol until Payment, 13 Car. 2. Stat. 2. c. 1. Within 20 Days after such Election, the Constables, &c. shall call such Inhabitants as have born the like Office, and make a Tax by a Pound Rate, which being confirmed by two Justices, shall be Quarterly paid upon Demand made by the Beadle, or other Officer to be appointed, and being refused, shall by Warrant of two Justices be levied by Distress and Sale. 13. Car. 2. Stat. 2. cap. 2.

But by the Statute of 19 Car. 2. c. 3. The Lord Mayor, Aldermen and Common Council of London, have Power to declare which shall be Streets and Lanes, and to stake them out, and the Number and Places for common Vaults, Drains and Sewers; and the Repairing the Streets is appointed to be set and ordered by them, or such Persons as they shall appoint under their Common Seal, who shall make any Tax for that Purpose, and thereby the Commissioners Powers by the former Act are taken away, and they have Power thereby to make Laws and Orders touching the same, and the Persons offending against such Orders, shall be proceeded against at the Sessions until they shall conform, and an Appeal from any Tax is to the Court of Aldermen, which is to be final. 22 & 23 Car. 2.

Certain Streets in London ordered and enlarged. 22 Car. 2.

See more of Highways, Tit. Bridges and Robbery.

Touching Alteration of Highways in the Wild of Kent, see 14 H. 8. c. 6.

Touching the Repair of Huntingdon Lane near Chester, see 37 H. 8. c. 30.

For the Repair of the Highway between Shaftesbury and Sherborn, see 1 M. 3.

For the Repair of the Highway between Bristol and Gloucester, see 1 M. 6.

For the Repair of the Highway near Oxford, see 18 El. 20. & 35 El. 7.

Justices of Peace may order new Ways to be made: And if they find them fit to be paved, may certify the same, at the next General Quarter-Sessions, to do therein as they shall think fit.

Scavengers, &c. refusing or neglecting their Duty, to incur a Penalty, to be levied by Distress and Sale of Goods, by Warrant from a Justice of Peace: And shall Account to two or more Justices for what Money remains in their Hands, and be imprisoned for not accounting.

Scavengers may by Order of the Justices at their Petit Sessions lodge their Dirt in convenient Places near the Street, giving Satisfaction to the Owners: And in Case of unreasonable Demand, the Justices may moderate the same. And Persons aggrieved by any Tax by Virtue of this Act, or by the Determination of the Justices, &c. may have Recourse to the General Quarter-Sessions, whose Determination herein shall be final.

If Common Highways in the said Parishes cannot be supported without the Help of this Act, then one or more Assessments shall be made on the Inhabitants, &c. to be allowed by such Persons as the Justices at their Quarter-Sessions shall direct; such Assessments in Case of Non-payment, to be levied by Distress, &c.

Lamps. Householders within the Weekly Bills of Mortality, from *Michaelmas* to *Lady-day*, to hang out Lights, or agree to make Use of ^{2W. & M. c. 8.} *Lamps*, to be placed at such Distances as shall be approved by two or more Justices of the Peace.

Hay. Hay wanting Weight, to forfeit 18 *d.* per Truss: All Carts Load-^{Ibid.} en with Hay, Straw, &c. within the Weekly Bills of Mortality, standing at irregular Hours, shall forfeit for every Offence 5 *s.* Justices of Peace upon View, Confession, or Proof by one Witness, may convict such Offender, and grant his Warrant for levying the Penalty.

Swine. No Swine shall be kept on the Backside of any paved Street, ^{Ibid.} where the Houses are contiguous, upon Pain of forfeiting the same. And the Church-wardens, Constables, &c. may in the Day-time, by Warrant from the Lord Mayor or any Justice, search for Swine, and drive them away to sell and distribute the Money to the Poor.

C H A P. LII. Vide XXVII.

Horses.

§. 1. Claim. *Stolen Horse.* Every Justice of Peace (after Sale in open Fair or Market of any stolen Horse, &c.) at any Time within *six Months* next after the said * Sale, (or rather next after the Felony done) may * ^{Lamb. 105. See the Stat.} take and hear the Claim and Proof of the right Owner, (from whom the same was stolen, or of his Executors or Administrators, or other Persons by their Appointment;) which Proof must be by two sufficient Witnesses upon Oath, to be made *within forty Days* next *ensuing such Claim.* ^{31 Eliz. cap. 12.}

Also the same Justice of Peace may minister an Oath to the Party ^{P. Fairs. 31 Eliz.} who *bought the said Horse*, or who had the Possession and Interest thereof, what Money he paid for the same *bona fide*, so as the right ^{12.} Owner repaying it may have his said Horse again. ^{Ibid.}

Toll taker. Note, that in every Fair or Market where any Horses, Geldings, Mares or Colts are to be sold, there ought yearly to be appointed out one certain and special open Place where the said Horses, &c. shall be sold; and one sufficient Person or more to take Toll, who shall continue in the said Place from the Hour of *Ten before Noon* until *Sun-setting* every Day of the *aforesaid Fair.* ^{2 & 3 P. & M. c. 7.}

§. 2. Market. Also Note, every Sale, or other Putting away, in any Fair or Market, of any *stolen Horse*, &c. not being according to the Statute in every of these Particulars following is void, to take away the Property of the Owner, from whom such Horse was stolen. *scil.* ^{2 & 3 P. & M. 7. 31 El. 12. P. 5 & 7.}

§. 3. Sale. 1. If the Horse be not, in the Time of the said Fair or Market between ten of the Clock and Sun-setting, *one Hour together* (at the least) in the open Place of the Fair, &c. Where Horses are commonly sold, ^{2 P. & M.} the Sale is void, &c.

2. If all the Parties to the Bargain, being in the Fair, shall not come together with the Horse to the Book-keeper to the open Place appointed, ^{2 P. & M.} the Sale is void, &c.

3. If

31 Eliz. 3. If the *Book-keeper, Toll-taker, Bailiff*, or other chief Officer *Voucher* of the same *Fair or Market* shall not take perfect Knowledge of the *Seller* or of the *Voucher*, *sc.* of their true *Christian Name, Sir-Name, Mystery* and *Place of dwelling*, or shall not enter all the same into his Book, the Sale is void, &c. And one *Voucher* is enough, if he be a sufficient and credible Person.

31 Eliz. 4. But if the *Voucher* be not a sufficient and credible Person, or if the *Voucher* shall not know the *Seller* indeed, or shall not truly declare to the *Book-keeper*, &c. the *Christian Name, Sir-name, Mystery* and *Place of Dwelling*, as well of himself as of the *Seller*, the Sale is void, &c.

5. If the *Book-keeper*, &c. shall not make *Entry* into his Book of *Entry of* the true Price that the Horse is sold for, with the Colour, and one *the Price* special Mark at the least of the same Horse, &c. 2 P. & M. & 31 Eliz. the Sale is void, &c.

31 Eliz. 6. So if a True and perfect Note in Writing, of the Name of *Book-keep-er* the *Seller* or *Voucher*, and of their dwelling, &c. and of the Price, be not given to the *Buyer* by the *Book-keeper*, &c. and subscribed *er* with his Hand, *er* *must give a Note to the Buyer*.

2 P. & M. 7. And lastly, if Toll be not paid where Toll is due, or the *Book-keeper* not paid for the *Entry*, &c. Vide 12 E. 4. fol. 8. *Crompt.* 91. *Fi.* 45.

If the Thief which stealeth an Horse shall sell the same Horse in *Thief sel-* Market overt or *Fair* by a false Name, and it is so entred into the *ling a* Toll-Book, such Misnaming of the *Horse by a* Seller maketh the Sale void a- *false* gainst the right Owner of the Horse. And this was the Opinion of *Name.* *Windham* and *Rhoads* Justices, (upon this Statute, 2 & 3 P. & M.) Anno 30 El. in a Case between *Gibbs* Plaintiff against *Bastel*, the Case being thus; One *Potter* did steal the Horse of the Plaintiff, and sold him to the Defendant in Market overt, by the Name of *Lyster*, and so it was entred into the Toll-Book, that *Lyster* sold the Horse, whereas his Name was *Potter*; whereupon *Gibbs* the Plaintiff brought his Action of the Case *Sur Trover* against the Defendant *Bastel*, &c. See *hic postea*.

Note also, that every Contract for any stolen Horse, &c. made out of open *Fair* is void, though they be after book'd. *Dyer* 99.

Co. 3. 78. Also, a Sale in a *Fair or Market* overt shall not take away the
83. 7 H. 7. Owners Property, where the *Buyer* doth know that the Property was
12. to another Man, or where the *Buyer* knoweth that the Horse, or
Co. 5. 83. other Goods were stolen. See *postea* Tit. *Restitution*.

Also to alter the Property of a Stranger who hath Right, the Horses and all other Goods are to be sold in such a Place, or Shop, as is commonly used for the Selling of Goods of the same Kind or Nature.

Also a Sale upon a *Sunday*, though in a *Fair or Market* overt, §. 4. shall not be a good Sale to alter the Property of the Goods, by *Sunday.* *Brian* 12 E. 4. fol. 1. b.

And indeed *Fairs and Markets* kept upon the *Sabbath* Day are prohibited by the Statute of *Winch. c. 6.* and of 27 H. 6. cap. 5. And now by the Statutes, 1 Eliz. cap. 2. & 3 Jac. cap. 4. all Persons resorting upon the *Sabbath* Day to any *Fair or Market*, and by the Means thereof absenting themselves from the Church, or not abiding at the Church orderly during all the Time of Prayer, Preaching, and other Divine Service, are to be punished by any one Justice of

of Peace, according to the Form of the said Statute 3 Jac. (which See *hic postea*, Tit. *Recusants*) or by the Ordinary, or Bishop of the Diocese, by the Statute 1 Eliz. Or otherwise the Offender may be indicted (for such his Absence from Church) at the Quarter-Sessions of the Peace, or general Gaol-Delivery.

Also the Lord of such a Fair or Market kept upon the Sabbath Day, contrary to the Statute, may be therefore indicted, either at the Assizes and general Gaol-delivery, or at the Quarter-Sessions of the Peace within that County. *Plus hic postea.*

But yet for that by Nonuser of a Franchise, Fair or Market, they may be forfeited and seized; therefore Fairs anciently holden upon Sundays, or upon other Principal Feast-Days, might be holden and kept within three Days before or after any of the said Feasts, after Proclamation first made, what Day the Fair shall be holden, though the Lord of the Fair hath otherways no Power to keep his Fair but upon such Day. Statute 27 H. 6. cap. 5.

§ 5.
What
Horses
may be put
into Com-
mons.

"No Commoner in any Forest, Chase, Moor, Marsh, Common or waste Grounds; nor any Officer thereof in Norfolk, Cambridge, Buckingham, Huntington, Essex, Kent, Southampton, Northwiltshire, Oxfordshire, Berkshire, Worcester, Gloucester, Somersetshire, North-wales, South-wales, Bedford, Warwick, Northampton, Yorkshire, Cheshire, Staffordshire, County of the City of York, Town of Gloucester and Liberties, Kingston upon Hull, Lancaster, Salop Leicester, Herefordshire and Lincolnshire, shall put to Pasture there any stoned Horse or Horses above the Age of two Years, and under the Height of 15 Handfuls, to be measured from the lowest Part of the Hoof of the Forefoot under the highest Part of the Withers; every Handful to contain 4 Inches by the Standard, to feed or depasture there, upon Pain of Forfeiture of the Horses found there. 32 H. 8. c. 13.

Seizure.

"These Persons finding such Horses therein, shall go to the Keeper of such Forest or Chase, his Deputy or Deputies, or to the Constable, Bailiff, Headborough, Borholder or Tithingman of any Town next adjoining, and command them to go and bring such Horses to the Pound; there to be measured by such Officer or Officers, in the Presence of three honest Persons to be named and appointed by the Officer, and if he be one found contrary, such Person challenging him may take him to his own Use. 32 H. 8. c. 13.

Neglect.

"If any of the said Officers or Persons to be appointed, shall refuse to measure, or not measure justly, every of them shall forfeit for not doing, or refusing, 40 s.

§ 6.
Drift of
Commons.

"All Forests, Chases, Commons, Moors, Marshes, Heaths and Waste-Grounds in England and Wales, shall be driven yearly by the Owners, or Officers of the same, and by the Constables, Headboroughs, Bailiffs, Borholders, and Tithingmen, within whose Limits they lie, upon Pain that every of the said Officers not so doing at Michaelmas every Year, or fifteen Days after, shall forfeit 40 s. for every Time, and the Lords, Owners and Possessors may by the Officers aforesaid make such Drift at any other Time in the Year.

Killing fit.

"If upon such Drift there shall be found any Mare, Filly, Fole or Gelding, that shall not then be thought able, or likely to grow to be profitable for Labour, in the Discretion of the Drivers, or the greatest Number of them. The Drivers shall cause the same Beast to be killed.

The Justices of Peace and Stewards of Leets may inquire of all Defaults, Contempts, Omissions and Offences against that Act, and the Presentments in the Leet shall be certified to the next Sessions, or to the *Custos Rotulorum* within 40 Days after it is made; and the Justices may determine the same by Examination, or otherwise; and if the Steward imbezil, conceal, or do not certify, he shall forfeit 40*s.* for every Offence, a Moiety to the King, the other Moiety to the Prosecutor that sues for it in the Sessions, by Bill or Information. 32 H. 8. c. 13.

This Act as to the Marshes, Fens, Seggy Ground in *Ely, Cambridgeshire, Huntingdonshire, Northampton, Lincoln, Norfolk and Suffolk* be repealed; but none shall put into these Grounds any stoned Horse above two Years old not of the Height of 13 Handfuls, to be measured as aforesaid. 8 El. 8.

Concerning Transporting of Horses, Geldings and Mares, vide 1 E. 6. 5. 5 El. 19. and Tit. *Transportation.*

Tho' the Sale is in every Circumstance pursuant to the Act before-mentioned, yet the Property is not altered, if the right Owner claim within six Months after the Horse is stole, which if found in a Town Corporate, then he must make his Claim before the Mayor or Chief Officer, if in a County at large, then before a Justice, and this must be done by two Witnesses on Oath, and within forty Days after the Horse is found, that the Property is in the Person claiming, and that the Horse was stolen from him within six Months after the Claim; this being proved, the right Owner shall have his Horse upon Payment to the Buyer what he shall swear it cost him.

Clergy is taken from Accessaries both before and after the Fact.

Selling a Horse in Fair or Market by a wrong Name, tho' all the Circumstances in the Statute are pursued, makes the Sale void as for Instance.

A Horse was lost and sold by T. S. in *Smithfield* by the Name of W. H. when there was no such Man: Adjudged that the Property was not altered, because it did not appear that the Horse was stole, and probably the Owner could not prove that it was stole.

Palm.
486.
W Jones
163. & C.

CHAP. LIII.

House of Correction. See at the End of Chap. 178.

39 El. 4. THE Justices of Peace of any County, &c. assembled at any Quarter-Sessions of the Peace, or the major Part of them, may make Order for the Erecting of one or more Houses of Correction, and may make Orders for the Doing thereof, and for providing a Stock and Things necessary, and for Punishment of Offenders, as they shall think fit, from Time to Time.

39 El. 4. Justices of Peace in Corporate Towns shall put that Act in Execution, and Justices of the County shall not meddle there.

All

§. 2. *Penalties.* All Fines and Forfeitures by that Act (except such as be there- 39 El. 4.
by otherwise disposed of) shall be employed for Reparation of the
Houses of Correction and Stock and Store thereof, or for the Use
of the Poor of the Parish, as the Justice of Peace shall think fit.

§. 3. *Commissi-
ons.* The Lord Chancellor, or Lord Keeper, may from Time to 39 El. 4.
Time grant Commissions to inquire by Oath of Persons, as by Wit-
nesses and Examination, of Monies collected for Maintenance of
Houses of Correction, &c. which Money shall be collected, or
employed for erecting or Maintenance thereof; that Act is continu-
ed by 3 Car. 1. 3 & c. 7. Ca. 1. c. 4.

§. 4. *Charities.* Every Person seized of an Estate in Fee-simple, may by Deed 39 El. 5.
inrolled in Chancery, erect, found and establish one or more Hos-
pitals, abiding Places or Houses of Correction, as well for sustenta-
tion of Poor, as to set Poor on Work, &c. See this Statute well
explained. 2 Inst. 720. and that Act is made perpetual by 21 Jac. 1.

Erection. By 7 Jac. c. 4. In every County where a House of Correction 7 Jac. 4.
was not before that Time provided; it was enacted a convenient
House or Houses with a Backside adjoining, with Mills, Turns,
Cards, and necessary Implements to set idle Persons on Work in
some convenient Place or Town of the County; which shall be
purchased, conveyed and assured to such Persons as the Justices of
Peace in Sessions shall think fit in Trust to be employed, &c. or
else every Justice of Peace was to forfeit 5*d.* to be employed for
the Erecting, Procuring, &c. such House.

§. 5. *Governour.* The Justices of Peace in their Sessions may elect and appoint one 7 Jac. 4.
or more Persons to be Governour or Master of the House of Cor-
rection, who shall have Power to set Rogues, Vagabonds, and Idle
and disorderly Persons to Work and Labour, being able; and to
punish them by putting Fetters or Givies on them, and by mode-
rate Whipping of them; which Persons shall not be chargeable to
the County, but shall have such Allowance as they deserve by their
Labour.

Allowance. The Justices of their Sessions may appoint a yearly Allowance 7 Jac. 4.
to the Master of the House of Correction, to be paid Quarterly
beforehand, by the Treasurer appointed by 43 El. 2. The Master
giving Security for Continuance and Performance of the Service,
which if the Treasurer shall not do, the Master may levy it, as
the Treasurer might have done.

See this Statute well expounded, and explained by my Lord
Coke, 2 Inst. 728.

§. 6. *Governour.
Duty.* If the Governour shall not every Quarter-Sessions yield a True 7 Jac. 4.
and lawful Account to the Justices, of all Persons committed to
their Custody, or if the Persons committed be troublesome to the
Country by going abroad, or shall escape away, before they be
lawfully delivered, the Justices may in Sessions set down such Fines
and Penalties on the Master as they shall think fit, which shall be
paid to the Treasurer.

Mittimus. The Justices Mittimus to the House of Correction may be most 2 Inst. 730.
safely made upon this Statute, *Quia otiosa & inordinata persona*,
for that he is an idle and disorderly Person, or for that he is an
idle Person, or that he is a disorderly. See *postea in Mittimus*,
Chap. 178.

C H A P. LIV. Vide XXVIII.

Hue and Cry.

HUE and Cry, signifieth a Pursuit of one or more that have committed Felony; and fly for the same. §. 1.
When, and
how to be
made.

Every Justice of Peace may cause Hue and Cry, fresh Suit and Search to be made, upon any Murder, Robbery, Theft, or other Felony committed: And this he may do by Force of the Commission, the first *Assignavimus*. Stat: *Winch.* 13 E. 1. cap. 1.

The Party robbed, or some one of the Company of one murdered or robbed, must speedily come to the Constable of the next Town, or to some other Habitant dwelling near the Place where the Felony was committed, and must give Notice of the said Felony, and will him to raise Huy and Cry, or to make Pursuit after the Felon: And the Constable must forthwith make Search in his Town; and if the Felon be not there found, then to give Notice to the next Towns, &c.

1 E. 1. 1, 2.
27 Eliz.
31. P. 1. 9. Note, That all Hues and Cries ought to be made immediately after Notice given of the Felony done, from Town to Town, and from County to County, and by Horsemen and Footmen; otherwise it is no lawful Pursuit. 28 Ed. 3: cap. 11.

Note also; When Hue and Cry is levied upon any Robbery or other Felony, the Officer of the Town where the Felony was done (as also the Officer whence Hue and Cry shall be after levied) ought to send to every other Town round about him; and not to one next Town only: And in such Cases it is needful to give Notice in Writing (to the Pursuers) of the Things stolen, and of the Colour and Marks thereof; as also to describe the Person of the Felon, his Apparel and Horse; &c. and shew which Way he is gone, if it may be.

Sir Nicholas Hide, in his Charge at Cambridge Assizes in Lent, 1522. delivered, That Hue and Cry must be made or pursued with Horsemen and Footmen; and that not only a private Search is to be made in every Town, but that they must raise the Country as they go, and all still to follow the Hue and Cry, as against a common Enemy. *Plus hic postea.*

Also the Officers of every Town to which Hue and Cry shall come, ought to search in all suspected Houses and Places within their Limits: And as well the Officers, as all other Persons which shall pursue the Hue and Cry, may attach and stay all such Persons, as in their Search or Pursuit they shall find to be suspicious; and thereupon shall carry them before some Justice of Peace of the County where they are taken; to be examined where they were at the Time when the Felony was committed, &c.

1 Leon.
323.

Cro. Car.
211.
W. Jones
239. S. C. Where a Person is robbed, and the Justice refuseth to take his Examination, an Action on the Case lieth against him, because in this Case he doth not act as a Judge of Record; but as a Minister appointed by the Statute; for which Reason he may take the Examination of a Person robbed, tho' the Justice is not in the County where the Robbery was done, because he taketh the Oath, not by Virtue of his Office, but by Virtue of the Statute, as aforesaid.

Owen 7.
Goldf. 58.
S. P. 'Tis not material in what Parish the Robbery was done, but there must be a Certainty of the Hundred.

Goods delivered to a Carrier were seised in one Hundred, and the ^{Gouldf.} ^{86.} Horse and Goods were led into another Hundred, and there they were taken away; adjudged, that the Hundred shall be charged where the Horse and Goods were seised, because at that Instant of Time they were in the Possession of the Offenders, but it was no Robbery till he came into the second Hundred; if the Carrier himself had led his Horse thither, for then it had been still in his Possession.

But if a Man is assaulted in one Hundred, and he escapes into an- ^{Hutt. 125.} other Hundred and is pursued and robbed there, in such Case the second Hundred is liable.

The Servant was robbed, and he ought to take the Oath and not ^{Cro. Eliz.} the Master, because the Servant might know some of the Robbers, ^{142.} but the Master could not, because he was not at the Time in Com- ^{1 Leon.} ^{323. S. C.} pany of his Servant.

So where a Servant was robbed of his Master's Goods, and brought an Action against the Hundred, in which he declared, that he was possess'd, &c. *ut de bonis suis propriis*, &c. and the Jury found, that ^{4 Mod.} he was robbed of 20 *l.* of his Master's Money, and 20 *s.* of his own ^{505.} ^{2 Salk.} Money; adjudged, that this Action was maintainable by the Servant; ^{614.} for by the bare Possession he is entitled to the Money as his own against all Persons but the right Owner.

There is another Case where the *Servant* was robbed, and the *Ma-* ^{2 Salk.} ^{613.} *ster* brought the Action against the Hundred; the Jury found that the *Master* was a *Quaker*, and would not take an Oath to answer whether he did know any of the Robbers; adjudged, that the *Master* might bring the Action, and that the Oath of his *Servant* was sufficient, especially if he was not robbed in the Company of his *Master*, but if robbed in his Presence, then the *Master* must make the Oath; which the *Quaker* refusing, he could not recover against the Hundred, because the Statute 27 *Eliz.* was made in Favour of the Inhabitants, to prevent Combination amongst Robbers and those who were robbed.

See more of Hue and Cry in the Title * *Robbery* and * *Felony*, * *Cap. 84.* *cap. 162.*

CHAP. LV. Vide XXIX.

Hunting.

§. 1.
Hunting in
Vizards.

UPon Information given to any Justice of Peace of the County where any unlawful Hunting of Deer or Conies (by Night, or with painted Faces, or other Disguising) in any Forrest, Park, or Warren shall be had, of any Person suspected thereof; such Justice may make a Warrant to the Sheriff, Constable, Bailiff, or other Officers, to take the Party, and to bring him before him, or before any other Justice of Peace of the same County, who may examine him of that Hunting, and of the Doers thereof: And if he conceal that Hunting, or any Offender with him therein, then the said Conceal- ^{1 H. 7. c. 1.} ^{P. Just. 16.} ment shall be * *Felony* in such Concealer. But if he then confesses the * *Quere*, ^{If they kill} ^{nothing.} Truth of all that he shall be examined of and knoweth in that Be- ^{Dy. fo. 50.} half; then his Offence of Hunting shall be but *Trespass*, and fineable: ^{The pl. 5.}

The Fine to be assessed at the next General Sessions of the Peace, by the Justices there. See *postea* Tit. *Felony by Statute*.

Also to disobey such a Warrant, or to make Rescous thereupon; so that the Execution thereof cannot be had, is Felony. *Vide ut supra*.

If any shall by Night or Day, unlawfully break or enter into any Park impaled, or several Grounds closed with Wall, Pale, or Hedge, and used for the keeping, breeding, and cherishing of Deer; and being thereof convicted at the Suit of the Queen, or Party, shall be imprisoned three Months, and pay the Party treble Damages; and be bound with Sureties to the Good Behaviour for seven Years, or else continue in Prison seven Years. 5 El. 21. §. 2. In Parks

This Act extends not to Parks, or inclosed Ground, then after to be made and used for Deer, without the Grant or Licence of the Queen, her Heirs, Successors or Progenitors. 5 El. 21.

The Justices of Peace in their Sessions, may hear and determine the Offences of Taking, Hawking, Fishing and Hunting against that Statute; and the Party may have his Remedy before them there, and may make out Process as well upon Indictments, as by Bill of Complaint, Information, or any other Action. 5 El. 21.

The Party grieved, upon Satisfaction to him made of his Damages; and upon Confession by the Offenders in open Sessions, may release the Suretiship for the Good Behaviour, at any Time, within the seven Years: And if the Party be bound, if he shall come in open Sessions, and confess the Offence, and be sorry for it, and pay the Party his treble Damages, may in the same, or any other Sessions, release the Recognizance. 5 El. 21. But it seems, that no other Justices, but those, before whom such Confession is made, can in the same, or any other Sessions, release or discharge the Recognizance. And it seemeth also, if the Party lie in Prison for Want of Sureties for the Good Behaviour, after the three Months; neither the Party grieved, nor Justices, upon Confession, can discharge him.

And forasmuch as many Grounds used for the Keeping of Deer, were altered or inclosed since 5 El. 21. a Statute was made 3 Jac. 13. with the same Provisions touching Deer, but pretended to the Killing of Conies also; but the Statute of 3 Jac. 13. extends only to the Killing, Hunting, and Chacing of Conies in the Night, and not in the Day-time; nor to any Park, or inclosed Grounds, after to be used for keeping Deer and Conies, without Grant.

P. 3 El. c. 10. No Person shall Hawk, or with his Spaniels hunt in any Ground, where Corn or other Grain shall then grow (except in his own Ground) at such Time as any eared or codded Corn or Grain, shall be standing; nor before it be cocked, shocked, &c. Upon pain to forfeit for every Time he shall so hawk or hunt, without the Consent of the Owner, forty Shillings to the Owner: Which, if he pay not within ten Days after Conviction, he may be imprisoned a Month, without Bail, or may be recorded by Action; and the Justices of Peace may hear and determine the same in their Sessions: And every Justice of Peace may examine the Offender, and bind him to the Sessions to answer the Offence, and to pay the Penalties, and receive the Punishment. §. 3. Hunting in Corn

The Justice of Peace that shall take the Examination of an Offender for unlawful Hunting in Parks, &c. as aforesaid, may after such Examination bind the Offender to his Good Behaviour, that he may be forth coming, till the Offence and Residue of the Offenders be fully examined: Otherwise, if it shall after appear, that the Offender hath

concealed any Thing whereby the Offence becometh Felony, then the Offender perhaps will not be found.

Also all such unlawful Hunting, if it be by Three or more, will prove a Riot. 1 Jac. 27.
P. Pheasant 7.

§. 5.
Greyhound.
Hare. Whosoever shall have or keep any Greyhound or Setting-dog, (not having sufficient Living according to this Statute;) or shall trace or course any Hare in the Snow, or otherwise destroy, kill, or take any Hare; the said Offences being proved, &c. before two Justices of Peace, the said Offenders shall be by them committed to the Gaol, &c. *Vide Tit. Partridges* more fully hereof.

And yet Hunting and Hawking, and such other Pastimes, every Man may use upon his own Lands at his Pleasure, so far as they be not restrained by Act of Parliament. But no Man may make a Park or Warren within his own Ground, without the King's Grant or Licence; and therefore such a Park or Warren (made without Licence) is not within the Stat. of 1 H. 7. 7. See *Br. Warren* 1. 2 Co. Li. 233.

What a Park is, and the Difference between a Park, a Forrest, and a Chase, and what be Beasts or Fowls of Park, Chase and Warren. *Vide Co. L.* 233.

There be divers other Statutes made against Hunting, &c. which be very Penal, but not to be dealt withal by Justices of Peace, except at their General Sessions. See more of them *hic postea*, Tit. *Bailment*, & Stat. 3 Jac. Regis, *hic antea* Tit. *Guns*.

This Stat.
extends to
all Persons
of what
ever E-
state. If any shall hunt, destroy, and kill a Hare in the Snow, and being thereof convicted, shall forfeit six Shillings eight Pence for every one. 14 H. 8. 10.

§. 6.
Deer. If any Person or Persons shall unlawfully course, kill, hunt, or take away any Red or Fallow-Deer in any Forest, Chase, Purlieu, Wood, Park, or other Ground where Deer are, or usually have been kept within England or Wales, without the Consent of the Owner, or Party chiefly trusted with the Custody thereof, or be aiding or assisting therein, and shall be convicted thereof by Confession of the Party, or Oath of one or more credible Witnesses, before one or more Justices of the Peace, being prosecuted within six Months after the Offence done;

* By Stat.
3 & 4
Will. 3.
the taking
in Tails,
killing or
wounding
any Deer,
forfeits
50 l. for
every Deer
so the In-
former, to
the Poor,
and to the
Owner. shall forfeit for every such Offence * twenty Pounds to be levied by Distress upon the Goods and Chattels of such Offenders; one Moiety to the Informer, the other to the Owner of the Deer: And for Want of Distress, the Offender to be committed to the House of Correction for six Months, and there put to hard Labour, or to the common Gaol for one whole Year, at the Discretion of the Justices before whom the Conviction shall be, and not be discharged from thence until sufficient Sureties be given for the Good Behaviour, for one whole Year next ensuing, after his or their Enlargement. Provided, no Offender punished by this Act shall incur any Penalty of any other Law for the same Offence.

And by the Statute 5 Geo. cap. 15. the Forfeiture is 50 l.

§. 7.
Search. One Justice of Peace, by Warrant under his Hand and Seal, may authorize any Game-keeper (which any Lord of a Manor, of the Degree of an Esquire, may appoint under his Hand and Seal) or any other Person or Persons, to search in the Day-time the Houses, Out-houses, and other Places of Persons thereby prohibited, as upon good Ground shall be suspected to keep Guns, Bows, Greyhounds, Setting-dogs,

dogs, Ferrets, Coney-dogs, or other Dogs, to destroy Hares or Conies, Hayes, Tramels, and other Nets, Loubels, Hare-pipes, Snares, and other Engines; and them to seise and keep for the Lord of the Manor, or to destroy them. 22 & 23 Car. 2.

All Persons are thereby prohibited, except such as have Lands and Tenements, or some other Estate of Inheritance in his own or his Wife's Right, of One hundred Pound per Annum; or for Term of Life, or have Lease or Leases for ninety-nine Years, or a longer Term of One hundred and fifty Pound per Annum, the Son and Heir of an Esquire, or other Person of higher Degree. The Owners and Keepers of Forests, Parks, Chaces and Warrens, being stocked with Deer and Conies for their necessary Use in respect thereof. 22 Car. 2.

22 & 23 Car. 2. Any Person that shall enter any Warren, or Ground used for the breeding and keeping of Conies (although the same be not inclosed) and there shall chase, take, or kill any Conies, being convicted thereof by his Confession, or by the Oath of one sufficient Witness, before any Justice of Peace, within one Month after the Offence; shall pay to the Party grieved treble Damages and Costs, and be imprisoned for three Months, and after, till he find Sureties for the Good Behaviour. §. 8. Warren.

If any Persons in the Night-time shall kill or take any Conies upon the Borders of any Warrens, or other Grounds, lawfully used for the breeding or keeping of Conies, except the Owner or Occupier of the Soil, or other Persons employed by them, whereupon they are killed or taken, and be thereof convicted as last aforesaid, shall give the Party such Satisfaction, and within such Time as shall be appointed by the Justice, before whom such Conviction is, and shall pay to the Overseers for the Poor's Use, such Sums of Money, not exceeding ten Shillings, as the Justice shall think fit: And in Default of such Payment, such Justice may commit the Party to the House of Correction, for such Time, as he shall think fit, not exceeding one Month. 22 & 23 Car. 2.

Any Person that shall be found or apprehended, setting, or using any Snares, Hare-pipes, or like Engines, and shall be thereof convicted, as aforesaid, shall be punished as in the said last Clause is mentioned. 22 & 23 Car. 2. §. 10. Snares.

Any Person grieved by any such Judgment, may appeal to the next General Quarter-Sessions, who shall give such Relief as is agreeable to that Act: Which Judgment shall be final, if no Title to any Land or Royalty be concerned. 22 & 23 Car. 2. §. 11.

If any Person having no Chace, Park or Forest of their own, keep, nor cause to be kept any Nets, called Deer-Hayes, or Buck-stalls, by the Space of a Month after Proclamation made of that Statute, upon Pain to forfeit forty Pound a Month for keeping of them. 19 H. 7. cap. 11.

No Person shall stalk, or cause to be stalked, with Busb or Beasts to any Deer in any Park, Chace, or Forest, or without (except in his own Ground, Park, Chace or Forest) without Licence of the Owner, Master, or Keeper, or forfeit for every Time forty Pound.

Two Justices of Peace in their Sessions may call the Person suspected before him, and examine them; and if upon Examination the Party be found in Default, then to commit him to Prison, till he find Sureties to pay the Fine; and these Justices that examine him, shall have the tenth Part of the Forfeiture for their Labour. 9 H. 7. c. 11.

Any

Deer-forest-ers. Any one that shall after the 25th of *March*, 1692. unlawfully ^{3 & 4 W. & M. c. 10.} course, hunt, &c. any Red or Fallow-Deer in any Forrest, Chase, &c. or other Ground enclosed, where Deer are or shall be usually kept, or shall be aiding therein, and shall be convicted by Confession, or the Oath of one Witness, before a Justice of Peace of the County where the Offence shall be committed, or the Party apprehended, within twelve Months after the Offence done, he shall forfeit for every such Offence twenty Pounds, and for every Deer wounded, taken or killed thirty Pounds, to be levied by Distress and Sale of Goods, by Warrant from the Justice before whom the Conviction shall be made; one third Part to the Informer, another third Part to the Poor of the Parish where the Offence shall be committed, and the other third Part to the Owner of the Deer. And for Want of Distress shall be imprison'd a Year, and set in the Pillory an Hour, on some Market-day in the Town next adjoining to the Place where the Offence was committed.

Search. Constables, &c. by a Justice's Warrant, may enter and search, for *Ibid.* stolen Goods, the Houses or other Places of suspected Persons; and if any Venison or Skins of Deer or Toils be found, shall carry such Offender before a Justice of Peace; and if he do not give a good Account how he came by them, or produce the Party of whom he bought them, or prove such Sale upon Oath, he shall be convicted of such Offence, and be subject to the Penalties inflicted for killing of Deer.

Certiorari. No *Certiorari* shall be allowed to remove any Conviction, or other *Ibid.* Proceeding upon this Act, unless the Party convicted shall before it be allowed, become bound to the Prosecutors in fifty Pounds, with Sureties to be approved by the said Justice, to pay within a Month after Conviction confirm'd, or a *Procedendo* granted, their full Costs to be ascertain'd upon Oath.

Destruction of Pails. Any Person that shall in the Night-time pull down or destroy any *Ibid.* Pails or Walls of any Park or Forrest, &c. where Red or Fallow-Deer shall be kept, such Person being convicted by Oath of one Witness before a Justice of Peace, shall by such Justice's Warrant suffer three Months Imprisonment.

Husband and Wife. See Chap. 157.

Indictments. See Chap. 184.

Informer and Informations. See Chap. 191.

C H A P. LVI.

Innholder.

*§. 1.
Horse-bread.*

NO Hostler or Innholder shall make his Horse-bread within his Ho- ^{Jan. 21.} stery, but Bakers shall make it; and the Assize shall be kept, and the Weight be reasonable, after the Price of Corn in the Market adjoining; and they shall sell their Horse-bread, Hay, Oats, Beans, Pease, Provender, and all Kind of Viſtuals, both for Man and Beast,

at reasonable Gain, having respect to what the same shall be sold for in the Market adjoining, without taking any Thing for Litter.

Jac. 21. If an Innholder live in a Town or Village, which is no City, Town Corporate, or Market-Town; yet being a Thorow-fare and common Passage, and no Baker dwelling there, he may make Horse-bread in his House of lawful Assize and Price.

Ibid. Justice of Peace (amongst others) may hear and determine Offences against this Act; and the Party offending shall be fined according to his Offence, and being once convicted, for the second Offence he shall suffer Imprisonment for a Month, without Bail; and for the third Offence, shall be set upon the Pillory, without being redeemed for Money. And if after such Judgment of Pillory, he shall offend again, he shall be forejudged of Keeping an Inn any more. Where Innholders are within the Statutes of Alehouses and Tipling, see Tit. Alehouses. § 2. Penalty.

Every Man that will, may erect an Inn, that can and will; for it is not a Franchise, as was resolved in Parliament. 20 Jac. Roll's Abridgment, Part 12. p. 84.

Hutt. 99. It was resolved by all the Judges, that any Person might erect an Inn to lodge Travellers, without any License or Allowance so to do.

1 Bulst. But if an Inn useth the Trade of an Alehouse, as almost all Inn-keepers do, it shall be within the Statutes made about Alehouses.

109. Moor 876 An Inn-keeper shall not be liable to make any Satisfaction for a Robbery done in his Inn and in the Chamber of any of his Guests hired for some Time; but if he leaves Goods in his Chamber, and returns again the same Night, the Inn-keeper shall be liable for such Goods stolen.

Benlos 173. S. C. Noy 126. 2 Cro. 188. S. C.

Moor 78. If an Inn-keeper bids his Guest take the Key of his Chamber and lock the Door, and that he will not take the Charge of the Goods, yet if they are stolen, he shall be answerable, because he is charged by Law for all Things which come to his Inn, and he cannot discharge himself by such or the like Words.

1 Salk. 388. Inn-keepers are bound by the Law to receive Guests, and for that Reason they may detain their Goods till they are paid; but Holt Chief Justice doubted, whether a Man is a Guest by setting up his Horse at an Inn, because the Horse must be fed, by which the Inn-keeper hath some Gain, tho' the Owner never lay in the Inn; but if he had left a Trunk or a Box there, he is a Guest.

The Question was, whether Houses kept for Lodgings in Tunbridge or Epsom, and dressing Meat for Lodgers, and finding Hay and Oats for their Horses, were properly Inns for quartering Soldiers, according to the Statute 4 & 5 Will. 3. cap. 13. it was insisted, that they were, being common and publick Houses, kept for Gain, and therefore within the equitable Construction of that Statute; but adjudged, that they were not, because the Soldiers are quartered against a Man's Will; but in Inns Persons are quartered willingly and upon Access; and an Inn-keeper is indictable if he refuse a Guest, but the Owner of one of those Houses is not, if he refuse a Lodger; nor a Livery-stable is not properly an Inn, because the Accommodation is for Horses only.

CHAP. LVII. Vide XXX.

Inrolment.

§ 11. ANY one Justice of Peace may join with the Clerk of the Peace, ^{27 H. 8. 16.} in taking the Inrolment of any Indenture of Bargain and Sale of Lands, &c. lying in that County where he is a Justice, and it is good.

Now the said Justice of Peace, and the Clerk of the Peace, are to take for the Inrolling of the same Deed indented in Parchment, &c. these Fees following, *viz.* where the Lands exceed not the yearly Value of forty Shillings, they are to take two Shillings, *scil.* twelve Pence for the Justice, and twelve Pence for the Clerk. And where the Lands exceed the yearly Value of forty Shillings, there they are to take five Shillings, *scil.* two Shillings six Pence for the Justice, and two Shillings six Pence for the Clerk. *Ibid.*

But such Deed (and all other Deeds, to be inrolled according to this Statute) must be indented *revera*, and must be inrolled within six Months after the Date of the same Indenture: And if it have no Date, then within six Months after the Delivery of the Deed; or if it be inrolled the very Day of the Date of the Deed, or the very last Day of the six Months, it is sufficient. ^{Co. 5. 20. Co. 5. 1. b. Dalison. 4 Eliz. Dyer 218.}

§ 2. *Computation.* Note, Herein you must account twenty-eight Days to every Month, and not above, (*scil.* Four Weeks to the Month.)

Note also the Difference when a Statute accounteth by the Year, half Year, or Quarter, and when by the Month; for a Year, half a Year, or a Quarter of a Year, shall be accounted according to the Kalendar, and by the Days in the Kalendar, and not after twenty-eight Days to the Month. And a Year, or a Twelve-month (in the singular Number) includes the whole Year according to the Kalendar.

But twelve Months (in the plural Number) or eight Months, or six Months, &c. shall be accounted after twenty-eight Days to every Month: For the Month, by the Common Law of England, is but eight and twenty Days. And so ^{Co. 5. 133. * Except in a Quare Imp. See Co. ib.}

Whereas { Three Months } hath but { 84 } Days;
 { Six Months } { 168 }
 { Twelve Months } { 336 }

The { Quarter of a Year } hath { 91 } Days;
 { Half-Year } { 182 }
 { Year. } { 365 }

*Ter centum, ter viginti, cum quinque diebus,
Sex horas, neque plus integer annus habet.*

Dyer 345

And as to these six Hours, the Law giveth no regard to them; and yet these six Hours every fourth Year make a Day, and so make the Leap-Year, and this Leap-Year containeth in it Three hundred sixty and six Days.

Note also for the Year, That the *Julian* Year, (instituted by *Julius Caesar*) beginneth the first Day of *January*, and so doth the Empire begin; the *Hebrews*, the First of *April*; the Church of *Rome* on the twenty-

Bible im-
pref. 1611

‘ twenty-fifth of *December*: But in all Matters legal with us, the Year beginneth not till the twenty-fifth Day of *March*. And therefore when in an Indictment, or other Writing, or Deed, it shall be set down, (or the Writing shall be dated *Anno Dom. 1617.*) it must be accounted according to the Computation of the Church of *England*; which beginneth the Year upon the twenty-fifth Day of *March*; upon which Day our Saviour Christ Jesus arose from Death, as it is holden; Dr. *White's Def.* 151. and upon which Day Christ was conceived in the Virgin's Womb, (as some write) ‘ and so was born in *December*; ‘ and then the Year of Our Lord must be accounted rather from his ‘ Conception and Incarnation; than his Nativity; and upon which Day the World, *Adam* our first Father, was created, as it is holden by others: But I leave these Things to Antiquaries. See the History of *Venice*, pag. 4 & 5.

Journeyman Taylors. See *Labourers*:

Judgment. See Chap. 188.

Jury. See Chap. 115.

The Form of the Precept to return a Jury. See Chap. 187.

Justice of Peace. See Chap. 173, 189.

C H A P. LVIII. Vide XXXI.

Labourers.

§ El. c. 4. **E**Very Justice of Peace, upon Request, may cause all such Artificers and other Persons fit to labour, to work by the Day in Hay-time, and Harvest-time, for the Saving of Corn and Hay, and may, upon their Refusal, imprison them in the Stocks, by the Space of two Days and one Night. ‘ And if the Justice neglect so to do, he shall ‘ forfeit forty Shillings. §. 1. One Just.

§ Eliz. 4. Any one Justice of Peace may license under his Hand and Seal, such Labourers as pass in Hay-harvest and Corn-harvest, from one County to another to work.

§ Eliz. 4. Any one Justice of Peace (upon Complaint to him made) may compel any fit Person (in his Discretion) to be bound as an Apprentice, with any one that shall require him to Husbandry, or any other Art, &c. And upon their Refusal may commit them to Ward, there to remain until they will be bound to serve as an Apprentice, according to the Statute. *No Person shall be compelled to be an Apprentice, unless he be under twenty-one Years of Age.* §. 2. Apprentices

‘ Apprentice signifieth one that is bound, by Covenant in Writing ‘ indented, to serve another Man for certain Years, and that his Master shall, in the mean Time, endeavour to instruct him in his Art ‘ or Trade. The usual Covenants for Apprentices, see *Cap.* 118. And note, that in such and all other Covenants, *Conventio legem vincit.*

A a

Every

(i.e.) 25 l.
per An-
num.

Every Person being a Householder, and using half a * Plough-land, ^{5 Eliz. 4.} at least, may take an Apprentice above ten Years of Age, and under Eighteen to serve in Husbandry.

Every Householder dwelling in any City, Borough, or Town Corporate, ^{5 Eliz. 4.} rate, and exercising any Art, Mystery, or manual Occupation, may retain the Son of a Freeman not occupying Husbandry; nor being a Labourer, and inhabiting in the same, or in any other City, &c. To serve and be bound as Apprentice for seven Years, at least; so as the Term expire not before the Apprentice be twenty-four Years old, but in Market-Towns not Corporate, they may take the Child of an Artificer.

No Merchant, Mercer, Draper, Goldsmith, Ironmonger, Imbroiderer, ^{5 Eliz. 4.} or Clothier, dwelling in a Corporate Town, may take any Apprentice except the Apprentice or Father have Freehold Lands to the Value of forty Pounds per Annum, &c. But if such Master live in a Market-Town not Corporate, his Apprentice, or his Friends, must have 3 l. per Annum in Freehold.

But these Artificers, viz. Smiths, Wheel-wright, &c. may take such ^{5 Eliz. 4.} Children Apprentices, whose Parents may dispend no Lands.

Every Cloth-worker, Fuller, Shearman, Weaver, Tailor, and Shoe-^{5 Eliz. 4.} maker, that keep three Apprentices, shall keep one Journey-man; and for every Apprentice above Three, shall keep one Journey-man, upon Pain of ten Pounds for every Default.

§. 3.
Misuser.

If any Master shall misuse his Apprentice, or that he shall have just Cause to complain, or if the Apprentice do not his Duty to his Master, upon Complaint thereof made by the Master, or Apprentice being grieved, to any one Justice of Peace of the County where such Master dwelleth, the said Justice shall take order between them; and for Want of Conformity in the Master, may bind him to appear at the next Sessions to be holden in the said County; where the Justices of Peace, or four of them, whereof one of them to be of the *Quorum*, if they shall think meet, may discharge the said Apprentice of his Apprenticeship and Indentures. But if there shall be Default in the Apprentice; the said Justices (at their said Sessions) may cause due Correction to be ministred to him. Also, That if the first Justice of Peace, to whom Complaint was made, shall find the Default to be in the Apprentice, then he may send him to the House of Correction, as an idle or disorderly Person, by the Statute of 7 Jac. c. 4. And need-^{7 Jac. c. 4.} eth not to trouble the Sessions with him, *tamen quare*. But from the Sessions they may send him to the House of Correction.

It seemeth by this Clause, that for ill Usage of the Master towards the Apprentice, upon Complaint by the Apprentice in the Manner directed by the Act, the Justices may discharge the Apprentice from the Master's Service, and not e converso, but for Miscarriage of the Apprentice, he may be corporally punished; and this I remember came in Question in the King's Bench, when Hale was Lord Chief Justice there; and he and the Court seemed to hold accordingly, but said, some Things and Questions were better sleep, than be stirred: By which he discovered his Opinion, but nothing more came thereof.

§. 4.
Purloining

If an Apprentice shall steal or purloin any Thing not delivered him to keep, above the Value of twelve Pence from his Master, the Appren-
tice, together with those that inticed or perswaded him thereto, or shall receive any of the same Goods, knowing they were purloined, after due Examination and Confession or Proof thereof made before any Justice

of Peace, He may send the Apprentice, as also the Inticers, Procurers and Receivers of those Goods, to the common Gaol, &c. But if the Goods be not above the Value of twelve Pence, the Apprentice, with the Procurers and Receivers, may be sent to the House of Correction by the Justices of Peace, or rather by the Justices at their General Sessions.

§ Eliz. 4. No Master, Mistress, or Dame, shall put away any Servant before the End of their Term, unless it be for some reasonable Cause, to be allowed by a Justice of Peace, &c. Nor shall put away any Servant at the End of the Term, without one Quarter's Warning given before two sufficient Witnesses, &c. ut postea. And the Proof of the Sufficiency or Insufficiency of the Cause of putting away of a Servant, shall be made at the Quarter-Sessions, &c. ut postea. "Nor may the Servant depart before the End of his Term, nor at the End of his Term, without a Quarter's Warning. § 3. Discharged

§ El. 4. Any one Justice of Peace may allow the Cause of putting away a Servant, or of the Departure of a Servant within his Term. put away

§ El. 4. But otherwise it is of an Apprentice, who cannot be discharged but by four Justices of Peace at the least, and in open Sessions as afore-
Br. 27.30. Plo. 250. Fitz. 143. said; or else by the Agreement of the Master and the Apprentice, and under his Master's Hand in Writing. And yet one that is retained as Ward. an Apprentice, may be seized by his Lord as a Ward, by Reason the Lord's Title is more antient.

§ El. 4. Any two Justices of Peace upon Complaint to them made, that any Servant (who is retained according to the Statute of § Eliz.) hath departed before the End of this Term, (unless it be for sufficient Cause to be allowed by one Justice of Peace, at the least) or at the End of his Term, without one Quarter's Warning given before two Witnesses; or that any Person compellable by the Statute to serve in Husbandry, or in any other Sciences in the said Statute named, upon Request made, hath refused to serve for the Wages appointed (by Proclamation in that County, &c. according to this Statute;) or hath promised, or covenanted to serve, and doth not according to the Tenor of the same, the said Justices may examine the Matter; and if they shall find such Servant or Person faulty therein, they may commit him to remain without Bail until he shall be bound to the Party offended, to serve and continue with him for the Wages limited according to this Statute, and then to be discharged without paying any Fee to the Gaoler. Servant departing

And yet any one Justice of Peace may make his Warrant to attach a Servant departed out of Service, or refusing to serve, to be before the Justices at their Sessions, there to answer their Defaults. See postea Tit. Warrants.

Also one Justice of Peace may send such idle or disorderly Servants to the House of Correction, and that by the Statute of 7 Jac. c. 4.

§ Eliz. 4. Now by the Statute § Eliz. every Person unmarried, and every other Person (married) being under the Age of thirty Years, having been brought up in any of the Arts, Sciences, or Trades in the Statute mentioned, is compellable to serve in any the said Trades, upon Request made by any Person using the same Trades, except such Persons be lawfully retained with some other; or have 40 s. in Land, &c. or 40 l. in Goods, and so allowed by two Justices of Peace, under their Hands and Seals; or have some Farm in Tillage, whereupon to imploy themselves, or be retained with any other Person in § 6. Who cannot be compelled to serve

‘ Husbandry, or in any the same Arts, or any other Art, nor retained
 ‘ or in Office with any Nobleman or Gentleman.

‘ Also every Person between the Age of twelve Years and threescore
 (not being lawfully retained according to the Statute, nor being a
 Gentleman born, nor a Scholar; nor having Means of 40 s. *per An-*
num, or in Goods 10 l. as aforesaid; nor Parents living, having 10 l.
 in Lands, or 40 l. in Goods, and being their Heir apparent) shall be
 compellable to serve in Husbandry by the Year, upon Request, &c.
 See *hic postea*.

§. 7.
 Wages.

‘ As for Servants Wages generally, they are grown so excessive at P. Just. 66.
 ‘ this Day (in many Countries) that the poor Farmers are thereby & Lamb.
 ‘ much disabled; for Remedy wherein, the Justice of Peace shall do ⁴
 ‘ well to take it into better Consideration, and give Remedy.

Any two Justices of Peace may imprison without Bail, the Master
 for ten Days, and the Servant, Workman, or Labourer, for twenty-
 one Days, that shall give, or shall take or receive excessive Wages, *scil.* ; Eliz. 5.

Any greater Wages, or other Commodity, contrary to the Rates or
 Wages assessed by the Justices of Peace at their *Easter* General Ses-
 sions; and Proclamation thereof made in that County.

‘ Now concerning the Wages of Servants, &c. The Justices of
 ‘ Peace (at every *Easter* Quarter-Sessions) shall do well to call some
 ‘ discreet Persons of that County, and they together respecting the
 ‘ Plenty, or Scarcity of the Time and other necessary Circumstances
 ‘ to assess the Wages as well of Servants, as of all Artificers, Handi-
 ‘ craftsmen, and Labourers, &c. according to the Statute, at their
 ‘ Discretions, and yet in such Manner, as that Servants, &c. may
 ‘ reasonably maintain themselves therewith: And that their Masters
 ‘ should in no wise exceed or give above such Wages, by Way of Con-
 ‘ tract: But yet Masters may reward a well deserving Servant, &c.
 ‘ (over and above his Wages) according as he shall deserve; so that
 ‘ ’tis not by Way of Promise or Agreement, upon his Retainer. See
 ‘ the Preamble of the Statute 5 *Eliz.* 4. that considering the Advance-
 ‘ ment of Prices of all Things belonging to Servants and Labourers,
 ‘ if more reasonable Wages and Allowances be given than is limited
 ‘ by former Statutes, it would be too great a Grief and Burden to the
 ‘ poor hired Servants and Labourers.

‘ Of which Rates, Proclamation shall be made, and the Justices
 ‘ may every Year alter and reform the same, as in their Discretions
 ‘ shall seem meet. And every Justice of Peace shall be present at
 ‘ the Taxing such Wages, unless reasonable Cause of his Absence up-
 ‘ on Oath, to be allowed by the said Justices, or forfeit 10 l.

‘ By the Law of God, *Thou shalt not oppress an hired Servant,*
 ‘ *that is needy and poor; but thou shalt give him his hire speedily, for*
 ‘ *therewith he sustaineth his Life.* Deut. 24. 14, 15.

Two Justices made an Order for the Defendant to pay 40 s. Wages
 generally; adjudged, this shall be intended Wages in Husbandry.

2 *Salk.* 484. 442.

‘ And the hire of Labourer kept back, crieth and entreth into the
 ‘ ears of the Lord. Jam. 5. 4.

Note, That every Retainer, Promise or Payment of Wages, or other
 Thing whatsoever, contrary to the true Meaning of this Statute, and
 every Writing or Bond made for that Purpose, shall be utterly void.

§. 8.
 Retainer
 for one
 Year.

‘ Also, any two Justices of Peace may imprison without Bail, the ; Eliz. 5.
 ‘ Master, who shall retain or keep any Servant, Workman, or La-
 ‘ bourer,

bourer, contrary to the Statute, *sc.* For retaining or hiring a Servant
 5 Eliz. 4. for less Time than *one whole Year*. But this extends to Artificers or
 Tradesmen, and only to such Trades as are named in this Statute, and
 not to Husbandry. See *hic postea*.

The Arts and Trades mentioned in the Statute 5 Eliz. are those fol-
 lowing, *Arrow-head-makers, Bakers, Brewers, Butchers, Bowyers, The Trades mentioned in the Stat. 5 Eliz.*
Cappers, Clothiers, Cloth-workers, Cooks, Cutlers, Curriers, Dyers,
Ferrers, Felt-makers, Fletchers, Fullers, Glovers, Hat-makers, Ho-
fiers, Millers, Pewterers, Saddlers, Shearmen, Shoe-makers, Smiths, Spur-
riers, Tailors, Tanners, Tuckers, Turners, and Woollen-cloth Weavers.

5 Eliz. 4. And yet no Retainer of any Servant for less Time than for *one whole*
Year is good, or according to Law. See *Fitz. 168. b. Co. L. 42. b.*

And two Justices of Peace of the County where the Offence hereun-
 der mentioned shall be committed, may imprison by the Space of *one*
 Year or less, by their Discretion, any such *Servant, Workman, or La-*
 bourer, as shall wilfully make any *Affault or Affray* upon his Master,
 or upon any other having the Charge or Oversight of him, or of his
 Work, the said Offence being proved before the said Justices by Con-
 fession of the said Servant, &c. or by the Oath of two honest Men. *§. 9. Assault his Master.*

And yet upon Complaint thereof made to any one Justice of Peace,
 he may bind the Offender to his Good Behaviour, and so to the next
 Sessions, and there he may be convicted and punished according to the
 Statute.

5 Eliz. 4. Any two Justices of Peace may compel any Woman (being of the *Woman.*
 Age of *twelve Years*, and under *Forty, and unmarried*) and whom
 they shall think meet to serve, to be retained in Service, by the Year,
 Week, or Day, for such Wages, and in such Sort as they shall think
 meet. And if such a Woman shall refuse, they may commit her un-
 til she shall be bound to serve as aforesaid.

Also by the Orders from the King's Majesty, imprinted *Anno 1630.*

p. 10. & 11. & Orders It appeareth, That for the better Execution
 of the Laws and Statutes in Force, the Justices of Peace at their
 monthly Meeting, shall (amongst other Things) inquire of all such
 idle Persons, who being able of Body to work, do nevertheless refuse
 to labour. And there (*Direct. 9.*) Direction is given, That if in a-
 ny Parish there be found any Persons that live out of Service, or that
 live idly, and will not work for reasonable Wages, or live to spend
 what they have at the Alehouse, those Persons to be brought by the
 High Constables, and Petty Constables to the Justices at their said
 monthly Meeting, there to be ordered and punished. *Vide plus*
Stat. 5 Eliz. hic antea & Br. 14. who are compellable to serve, &c.
Hic postea & titulo Poor.

Any two Justices of Peace may make a Testimonial to a Serving-man *Testimoni-*
 that is turned away from his Master, or whose Master is dead, *14 Eliz.*
c. 5. Quere, If this be still in Force. Lamb. 326. 'tis disused and obsolete.

1 Jac. 6. For Clothiers which will not pay their Workmen such Wages as shall *Clothiers.*
 be assessed by the Justices at their Sessions, see the Title of *Cloth.*

5 Eliz. 4. The Certificate which is to be made to the Head Officer of any City *§. 10.*
 or Town Corporate, where a Child is to be bound Apprentice, (*scil.* *Three Ju-*
 That the Father of such a Child may dispend forty Shillings *per An-*
tificati.
num) must be under the Hands and Seals of three Justices of the Peace
 of the Shire, where the Land lieth.

The Reason of this Law seemeth to be, for that such as are to be
 bound Apprentices in corporate Towns, &c. if their Parents be of a
 competent

competent Livelihood, then their Masters shall not only be the better secured, &c. But such Apprentices also in Likelihood, shall have the better Means to set up their Trades after their Time expired. And concerning such, whose Parents have not forty Shillings *per Ann*, they are fitter to be bound Apprentices to Husbandry, &c. in the Country.

But concerning this Certificate, 'tis not much in Use at this Day; neither is it material, that for Want thereof, the Indentures for the Binding of such an Apprentice shall be void, (for the Justices of Peace cannot be compelled to certify,) &c. but if the Parents have forty Shillings *per Annum*, it sufficeth: And so were the Opinions of Sir *Humphry Winch* and Sir *William Jones*, in the Court of *Common Pleas*, *Termine Pasch.* 21 *Jac. Regis.* But Sir *Henry Hobart* Lord Chief Justice of the *Common Pleas*, did not then deliver his Opinion directly; yet he seemed to me to hold, That the Parents of such an Apprentice ought to have forty Shillings *per Annum*, and also ought to procure such a Certificate from the Justices of Peace.

Here I think it not amiss to set down certain Cases, some of them being by Way of Exposition of this Statute 5 *Eliz. c. 4.* And other some at the Common Law, or grounded upon former Statutes; yet such as may give Light and Help to our Justices of Peace in this Business.

§ 11. *Trades, what lawful.* First, By the *Common Law*, no Man may be prohibited to work in *Co. 11. 53.* any lawful Trade, for the Law abhorreth Idleness, as the Mother of all Evil.

A Man cannot be restrained to use the Trade of making Dice, Cards, *Co. 11. 86.* Bowls, or the like, (except it be by Parliament) for all Trades, which do avoid Idleness, and exercise Men in Labour for the Maintenance of them and their Families, and to increase their Substance, and to serve the King, when need shall be, are profitable for the Commonwealth; and therefore the Restraining of them is against the Law, &c. *Co. 12. 86.*

So necessary are Trades to a Kingdom, That if a Man be bound not to use a Trade that he hath been brought up in, that Bond is void: But a Man may bind himself not to use a Trade in a particular Town or Parish.

Also by the Common Law no Man is prohibited to use divers Mysteries or Trades at his Pleasure: And altho' this was prohibited by the Statute 37 *Ed. 3. cap. 6.* yet at the next Parliament (that Restraint of free Trade being found prejudicial to the Commonwealth) it was enacted, That all Persons should be as free as they were at any Time before the said Statute, *Co. 11. 54.* See the Statute of 38 *Ed. 3. cap. 2.*

So that without an Act of Parliament, no Man may be restrained, *Ibid.* either to work in any lawful Trade, or to use divers Mysteries or Trades; therefore Ordinances made to restrain any Person therein are against the Law: And yet Ordinances made for the good Order and Government of Tradesmen, &c. are good. *Co. ibid.*

Apprentice seven Years. None shall use any Art, Mystery, Craft, Trade, or Occupation, except he hath been brought up therein seven Years as Apprentice, 5 *Eliz. 5.* By 15 *Car. 2. cap. 15.* 'Hempdressers, and making Cloth of 'Hemps and Nets; and Tapestry is excepted.

And it is lawful for any Person to use privately any Trade (as of *Co. 11. 54.* a Cook, Brewer, Baker, or Taylor, &c.) in his own House, or in the House of any other, for the private Use of the Family, altho' such Person were never Apprentice to the Trade. *Co. ibid.*

If a Man use the Trade of Tallow-Chandler, Baker, Brewer, or any other lawful Trade or manual Occupation, for his own Use,

Use, or for the Use of his Family, without selling any for Lucre and Gain, he may lawfully do it. Co. 8. 129, 130.

But yet he which useth any Trade, or other manual Occupation, for the Use of himself, or of his Family only, (without Selling) he cannot retain any Apprentice within the Statute of 5 Eliz. Co. 8. 129. But he may hire one to be his Servant, who is skilful in that Trade or Occupation.

One purchased a Mill, and hired a Miller to be his Servant, who ^{Not an App.} ground the Grists of his Neighbours, and the Wife of the Owner of ^{prentice.} the Mill took Money of the Neighbours for their Grist so ground; and for this the Husband (who was Owner of the Mill) was indicted at Cambridge Summer Assizes, An. Dom. 1619. by Reason that he was never himself Apprentice to the Trade. It was the Case of T. P. Yeoman.

The Intent of this Statute 5 Eliz. cap. 4. was, that no Person should take upon them any Art, Mystery, or Trade, &c. But such wherein they had Skill and Knowledge, according to the Rule, *Quod quisque norit, in hoc se exerceat.* Co. 8. 130.

And therefore none may keep a Common Brewhouse, Bakehouse, Cook's Shop, &c. to sell to others, except they have been Apprentice thereto by the Space of seven Years, &c. *ibid.*

Note, that these Words Mystery, Trade, and Craft, do all bear one Sense or Signification. See Plow. 537. b. Co. 11. 54.

Cromp.
185.

Note next, that this Statute, 5 Eliz. cap. 4. extended not to Serving Men, but to Servants in Husbandry, and Handy-crafts: And yet where the Words of any Statute be Servant in general, there it extends to all.

Any Employment which requireth no extraordinary Skill to Exercise is not within this Statute; and it hath been adjudged and affirmed in a Writ of Error, that a Pippin-Monger is not within this Statute, for it requireth no Skill to use it; so Ploughing or Digging is not within it: For in those Trades Strength is more required than Skill. Quare, Of Upholsters. Roll's 2 part. Rep. p. 10. The King against Tollin.

Every one bound an Apprentice according to that Statute, although ^{Apprentice} under Age, yet is compellable to serve his Time out, as if he were of ^{being an} Age, when he was bound, 5 Eliz. 4. But that is to be understood of ^{Infant.} a Compulsion, by the Means prescribed by that Statute; for the Covenant is not good, so as to enable the Master to bring an Action upon it, as was resolved, H. 5 Car. 1. Cro. p. 129. Gilbert vers. Fletcher.

Crom. 1 p.
184. P. 15.

An Apprentice must be retained by Indenture, and by the Name ^{§. 12.} of an Apprentice expressly; or else he is no Apprentice, though he ^{Who be} be bound. ^{compellable} ^{to serve.}

Who are compellable to serve, see in this Title before and after.

5 El. 4.

Every Justice of Peace (as also the Constable) in the Time of Hay, or Corn Harvest, upon Request shall and may cause all such Artificers, and Persons as be meet to labour, by their Discretion, to serve by the Day for the Mowing, Reaping, Shearing, Getting, or Inning of Corn, and Hay, according to their Skill and Quality of the Person; and may set the Refusers in the Stocks by the Space of two Days and one Night.

Fitz. 168.
b.

Every Justice of Peace may command vagrant Persons to Prison, if they will not serve.

Every

Every Person who hath not sufficient Lands to occupy, or live upon, nor other Art, is compellable to serve. See Br. 14. Fitz. 178.
a. 168. 1.
Fitz. 167,
d. e.

If an Infant, Man, or Woman, of twelve Years of Age, or a Gentleman, Chaplain, or other Person, who is not compellable to serve; yet if they shall make a Covenant to serve in Husbandry, they shall be bound by their Covenant, and are punishable, if they then shall depart, &c. P. 3. 14.
Br. Ley
67.

Infant. Yet by the Common Law such a Covenant or Retainer of an Infant under twelve Years of Age was void, they neither having Ability of Body nor Years to consent: For an Infant (by the Common Law) is not of Age to bind it self by Covenant, *ante annos nobiles*, which is twelve Years in a Woman, and fourteen Years in a Man Child. Co. 7. 43. & 9. 72. Neither before that Age are they accounted *Potens in corpore*, which are the Words used in the Statute 23 E. 3. though these Words are now left out of the Statute of 5 El. And thereupon Markham in 21 H. 6. and Brooke 7 H. 4. 5.
2 H. 4. 18.
Br. 19, 20.
21 H. 6. 32.
Br. 30. bridging that Case, seem to hold fourteen Years to be the Age for Retainer of an Infant, but there the Case was of a Man Child that was retained.

But now by the Statute of 5 Eliz. cap. 4. any Person above the Age of ten Years, by their own Consent and Agreement, may by Indenture be bound as an Apprentice to Husbandry, or any other Trade or Art. P. 51. 53.

Also some of twelve Years of Age by the same Statute, are compellable by the Justice to serve in Husbandry: So also it seemeth of other Trades, Arts, or Occupations. P. 3. 22, 23.

Such Children, whose Parents are not able to maintain them, though they be under Twelve, may be bound Apprentice by the Overseers of the Poor, with the Assent of any two Justices of Peace, by the Statute of 43 El. cap. 2. See *Postea* Tit. Poor.

If a Child hath used Husbandry till his Age of twelve Years, yet if he be not bound as an Apprentice to Husbandry, (and that his Parents be not able to maintain him) then the Overseers for the Poor, by the Assent of the Justices may bind as an Apprentice such a Child, according to the Statute 43 Eliz. cap. 2. and that by Force of the said Statute, P. Tit. Poor, 23. And any Person to whom the Overseers shall so bind such an Apprentice, may take and keep him as his Apprentice, &c. 1 Jac. 25. & 21 Jac. 28.

Married Persons. If a Woman who is a Servant, shall marry, yet she must serve out her Time, and her Husband cannot take her out of her Master's Service. 2 H. 4. f.
13.
Br. 13.
Fitz. 168.

A married Man and his Wife do bind themselves to serve, they shall be compelled to serve according to their Covenant or Agreement. Fitz. 168.

One under the Age of thirty Years, and brought up in Husbandry; or a Maid-servant brought up in any of the Trades mentioned in the Statute of 5 Eliz. 4. and not inabled to live (according to that Statute) at his or her own Hands, such Persons living out of Service; and not having visible Means of their own to maintain themselves without their Labour, and refusing to serve as an hired Servant by the Year, may be bound over to the next Sessions, or Assizes, and to be of Good Behaviour in the mean Time; or may be sent to the House of Correction. Dyer, 17.

But

But a Man that holdeth Land of his Lord, to do certain Days Works Yearly shall not be compelled to serve. 40 E. 3. 39. *Crompt.* 185.

Fitz. 168. b. If a Man who is not able nor sufficient to keep a Servant, shall retain one, such Retainer is void. *Br.* 25. §. 3. What Retainer is good.

If a Man retaineth a Labourer or Servant, to serve him according to the Statute, though no Wages be spoken of upon the Retainer, yet 'tis good, and they shall have such Wages as are assessed and appointed by Proclamation, for that Wages are certain. See to this Purpose the Book 3 H. 9. fol. 23. *Br.* 1.

If a Man retaineth another, except the Retainer be according to the Statute, 'tis void; without it be by Indenture, and then being by Deed, he is bound by his Covenant. See *Fitz.* N. B. fol. 168.

If a Man retaineth upon Condition, 'tis a good Retainer. See 11 H. 4. 42. *Br.* 23.

A Man retaineth a Servant to serve him generally, not expressing in what Office, or in what Business, (as to serve him in Husbandry or in the Office of a Book, Butler, Horse-keeper, &c.) yet such Retainer is good. 21 H. 6. 9. *Br. Labor.* 29.

A Man is retained to serve during his Life, 'tis a good Retainer, *Br.* 44. 2 H. 4. fol. 15. And so for three Years or more, *Fitz.* 168.

A Man is retained for one Year, to serve at any Time when he shall be thereto required, this is no good Retainer. See 23 H. 6. 30. *Br.* 31.

Fitz. 19 b. Retainer of a Servant generally, without expressing any certain Term, shall be for one Year (in Construction of Law) for that Retainer is according to Law. And this is now by 5 Eliz. cap. 4. made void, unless it be for a Year, to certain Trades therein named. P. 1. C. L. 42. b.

Fitz. 169. f. A. retaineth a Servant for forty Days, and after B. retaineth the same Servant for one Year: The first Retainer by A. is become void. *Br.* 51. See 11 H. 6. 1. *Br.* 46.

Fitz. 168. If a Servant, who is retained, shall depart out of his Service, and wander, he may be compelled to serve another Man; but yet the first Master may take him again. See *Br. Notice*, 2. 4. And besides, it is safe to get the Consent of his first Master, for now by the Statute, 5 Eliz. c. 4. the Master retaining a Servant that is departed out of Service, without shewing (before his Retainer) a Testimonial, shall forfeit five Pounds. Departure.

P. 8. A Man that retaineth a Servant, ought to take Notice of every former Retainer within the same County; otherwise it is of a Retainer in another County. 17 E. 4. fol. 7. *Br. Notice* 26.

Fitz. 168. And yet Mr. *Fitzh.* Opinion was, that if one retaineth another Man's Servant (generally) not knowing that he was another Man's hired Servant, he was not punishable, except he should detain him after Notice thereof, but now the Master may and must take Notice whether he hath a Testimonial or no; but this is not in Use. b. H. 4. Br. 7, 29, 33. Dr. St. 149.

Fitz. 198. d. If one taketh an Infant, or other Servant out of another Man's Service, this is punishable, though the Infant or Servant was not retained; but if an Infant, being retained as an Apprentice or Servant, fall to be a Ward, the Lord may take him from his Master, for the Lord's Title is more ancient; yet here the Lord ought §. 14. Departure of a Servant.

Fitz. 143. 1. Plo. 252. B b first

first to give Notice thereof to his Master. 50 E. 3. 22. Br. Labor. 17. See Br. Notice 24.

If a Servant or Apprentice depart into another County, the Justices of Peace may issue out a Capias against him into the County or Place whither he is fled; and being taken thereon, shall be imprisoned till he give Surety to serve as he ought. 5 Eliz. 4.

Testimoni-
al.

If a Servant depart, and be retained without a Testimonial, he shall be imprisoned until he procure it; and if he procure it not, within twenty Days, he shall be used as a Vagabond; and the Person that Retains him without such Testimonial shewed, shall forfeit five Pound. And if any Person be taken with a counterfeit Testimo- 5 El. 4. nial, he shall be whipped as a Vagabond. This is not in Use.

Note that by the Retainer, the Servant is in Service presently by Law, although he cometh not into his Master's Service indeed. 41 E. 3. 20. 46 E. 3. 4. 47 E. 3. 14 Br. 9. 11.

If a Servant depart from his Master, he may take him again, and keep him whether he will, or no. See the Title Surety for the Peace. And the Constable may take and bring such Servant to his Master again. Fitz. Labor. 56.

TaskWork.

Any Artificer or Labourer that shall take any Piece of Work in Great, in Task, or in Gros, or that shall take on him to make or finish such Work, shall not depart from the same (unless it be for Non-payment of his Wages, or Hire, or otherwise taken to serve the King, or for other lawful Cause) without License, upon Pain of Imprisonment for one Month without Bail, and five Pounds: For which the Party may have his Action and Costs. 5 El. 4.

Putting a-
way a Ser-
vant, vide
antea.

The Master cannot discharge his Servant, during his Term, &c. without the Agreement of his Servant. And now by the Statute 5 El. 4. it must be for some reasonable Cause to be allowed by one Justice of Peace, at least, &c. Vide P. 5. otherwise the Master shall forfeit forty Shillings. Tamen quere. For where the Departure or putting away the Servant, is by the joint Consent of Both 'tis not within the Statute of 5 Eliz. neither is the Allow- 16 H. 6. 30. Br. 27.

ance of the Justice of Peace requisite therein. The Master may discharge his Servant by Word, but an Ap- 6 E. 4. 2. prentice cannot be discharged, except it be by Writing: For that 2 E. 6. 33. Br. 30, 38. an Apprentice cannot be but by Writing.

If a Servant shall be put away by his Master, he shall have his Wages for the Time he served. And yet in this Case, if the Servant agree thereto, the Servant shall have no Action to recover any Part of his Wages, but must crave the Help of the Justice of Peace herein. But if such Servant be within Age, it seemeth such Agreement shall not prejudice the Servant. 2 E. 6. 33. Br. 30, 38. Br. 48. 10 H. 2. 3.

But if a Servant of his own Accord shall depart from his Master before his Time expired, he shall loose all his Wages. 10 Ed. 4. 1. 49 H. 19.

Executor.

If a Servant be retained according to the Statute, and the Master dieth, his Executors shall be chargeable to pay such Servant his Wages; otherwise it is where the Retainer was not according to the Statute, except it were by Indenture. See 2 H. 4. 15. Br. Labor. 49.

and Fitz. Nat. Br. 168. f.

Infant.

An Infant of five Years of Age, or other Person which is not Potens in corpore; yet if they shall be retained, and shall serve indeed, their Master must pay them their Wages. See 38 H. 4. 22. Br. Labor. 46. and Ley Gager 67.

If

If a Servant retained for a Year, happen within the Time of his *Sickness* Service to fall sick, or to be hurt or lamed, or otherwise to become *Non potens in corpore*, by the Act of God, or in doing his Master's Business; yet the Master must not therefore put such Servant away, nor abate any Part of his Wages for such Time.

3 H. 6. 37. If a Servant shall refuse to do his Service, that is a Departure in Law, although he stay still with his Master.

Fitz. 1. 68. Br. 51. P. 6. If the Master shall detain from his Servant his *Wages, Meat, or Drink*; this is a good Cause of Departure: But yet this Cause is now by the Statute of 5 *Eliz.* to be allowed of by the Justices of Peace, before the Servant may lawfully or safely depart.

Fitz. 168. Br. 51. P. 9. So if the Master shall *license* his Servant to depart, or if the Master, or Wife of the Master shall *beat the Servant*; these were good Causes for the Servant to depart, before the Statute 5 *Eliz.* 4. But now the Allowance of the Justice of Peace, is requisite as aforesaid. And yet Note, that the Master by Law is allowed with Moderation to chastise his Servant or Apprentice. See 33 H. 8. 12. And in the Title, *Surety for the Peace*.

But now that, by the Statute of 5 *Eliz.* the Causes of putting away and departing of Servants, are referred to the Consideration and Allowance of the Justices of Peace: It behoveth them to have good Care, lest by their giving too much way therein, either to the Master or Servant, many, which might by due ordering, have proved good Servants, turn Rogues and Vagabonds.

If a Servant depart before the End of his Term, or at the End of his Term, without a *Quarter's Warning*, or refuse to serve for the Wages limited, or promise to serve, and do not serve; upon Complaint any two Justices, or the Mayor and two Aldermen, &c. they may commit him to Ward without Bail, until he be bound to the Party offended to serve as he ought. 5 *El.*

If any Servant or Apprentice shall unlawfully depart, or flee into another Shire, the Justice, &c. may grant Writs of *Capias* to the Sheriff, or other Officer, whether the Servant is gone to take his Body returnable before them, &c. who shall imprison the Offender, till he find sufficient Surety to serve his Master again. 5 *Eliz.* 4.

No Person (retained in Husbandry, or in any the Arts and Sciences mentioned in the Statute of 6 *Eliz.* cap. 4.) after his Retainer expired, may depart out of one Limit, Town, or Parish, into another, without a Testimonial, under the Seal of the Officer of the Town where he last served, &c. Neither may any Person take into his Service any Servant so departing without shewing such Testimonial, upon Pain that every Person retaining any such Servant, without such Testimonial, shall forfeit five Pounds, being thereof convicted upon Indictment taken in the Sessions of the Peace, &c. and upon Pain, that every Servant so departing without such Testimonial, shall be imprisoned until he procure a Testimonial; the which, if he cannot do within the Space of twenty-one Days, next after the first Day of his Imprisonment, then he is to be whipped and used as a Vagabond; and so if he be taken with any counterfeit or forged Testimonial. 5 *El.* c. 4. P. 7. 8. This is out of Use.

Now for the better rating of Servants Wages, and for the better Placing, Bestowing, Setting, and Ordering not only of Servants, but also of all such idle People (Men and Women) as being fit and able to

Constable
Sessions

labour and serve, do nevertheless refuse to labour, or seek to get themselves Services, or (rather living idle at home with their Parents) or perhaps cannot get themselves any Services, the Statute made 5 *Eliz. cap. 4.* hath enabled the High Constable of Hundreds in every Shire, to hold, keep and continue their Potit^r or Statute Sessions in all Shires wherein such Sessions have been used to be kept, and after the ancient Manner: And as to these Sessions, both Household^rs, Servants, and others fit for Service, do or ought to come; so if one or two of the next Justices of Peace in every Division, would take the Pains to be there also to assist the High Constables, it would both add Force to their Proceedings, as well for the placing of Servants, as also for assessing the Wages: And also for the preventing many other the Abuses and Disorders both in Masters and Servants.

§ 17. Justices of Peace shall meet twice in the Year to enquire of the Breaches of the Statute of 5 *Eliz. 4.* And shall have five Shillings per Diem for their Wages. 5 *Eliz. 4.*

§ 18. A Moiety of all Forfeitures to the King, the other Moiety to the Informer. And the Justices may hear and determine the Offence, as well by Indictment and Information, as Action of Debt or Bill; and may make Process according to Law; and in Michaelmas Term shall certify the Extreats, 5 *Eliz. 4.* But in Corporate Towns such Person shall have the King's Part of all Forfeitures, as the Mayor, &c. shall appoint. 5 *El. 4. Cro. 9. c. 1. p. 290. Hob. p. 183.*

Apprentices
as to
Trades.

By the Statute 5 *Eliz.* one Justice may reconcile any Difference between the Master and his Apprentice if he can, and if he cannot, and the Fault be in the Master, he may bind him over to the Quarter-Sessions, and then four Justices under their Hands and Seals may discharge the Apprentice; and if the Fault be in him, then to send him to the House of Correction, if he will not give Security to appear at the next Sessions; and if he doth, then four Justices may make such Order as they shall think just. 5 *Eliz. cap. 4.*

But the Master and Apprentice may, by Agreement between themselves leave each other; and if so, then the Master may give Leave under his Hand for the Apprentice to depart; and then one Justice out of Sessions may discharge him, allowing the Cause of his Departure.

Where the Master gives Leave under his Hand for his Apprentice to depart, he cannot afterwards recall it: Therefore where an Action of Covenant was brought by the Master, for that the Apprentice left his Service at such a Time, the Defendant may justify by Virtue of a Licence from the Plaintiff at such a Time; and at the Trial the Master shall not give Evidence of his Apprentice leaving him at any other Time, because the Time is not transitory, as in an Action of Trespals, but very material upon such a Declaration. Mod. Ca. 70.

A Mountebank took an Apprentice in *Yorkshire* where he had a Stage, and covenanted in the Indenture to teach him the Art of Surgery; afterwards being in *Middlesex*, the Apprentice complained to the Justices, that his Master did not teach him the said Art, and obtained an Order to be discharged, but it was quashed: 'Tis true, the Words in the Statute 5 *Eliz.* which relate to the Service of an Apprentice, are very General, viz. Arts and Sciences, under which Words a Surgeon may be comprehended, but the other Words, which relate to the discharging Apprentices, extend only to the Trades mentioned

tioned in that Statute, but neither a *Surgeon* or *Mountebank* are there in mentioned.

After one Justice hath endeavoured to compose the Matter between the Master and his Apprentice, four Justices, upon the Appearance of the Master, may discharge the Apprentice; such an Order was made, but it did not set forth that the Master appeared, which is required by the Statute; but adjudged that the Statute must have a reasonable Construction; for admitting the Master run away, yet the Apprentice shall be discharged: But in the principal Case the Master was a *Collar-maker*, which is not a Trade mentioned in that Part of the Statute which relates to the *discharging Apprentices*.

1 Roll. It was the Opinion of my Lord Coke, that an *Upholster* is not a Trade within the Statute, but the later Opinions are otherwise.
Rep. 1.
2 Bull.
186, 187. Sid. 361. 1 Lev. 243.

Noy. 153. Information against the Defendant for exercising the Trade of a *Dier*, not having served seven Years Apprenticeship to that Trade; it appeared at the Trial that the Defendant was a *Felt-maker* and *died Hats*, which being Part of his Trade, he was acquitted.

Raim. Indictment against the Defendant for using the Trade of a *Barber*, 385. and against another for using the Trade of a *Salesman*, not having serv'd an Apprenticeship for seven Years: Adjudged that both these Trades are within the Statute; this was upon a Demurrer to the Indictment.

Indictment against the Defendant for exercising the Trade of a *Merchant-Taylor* is not within the Statute, because not used here before that Statute; *Eliz.* was made, for which Reason it was quashed.

3 Cro. A *Brewer* is a Trade within the Statute, so adjudged upon a Writ of Error. 178.

8 Rep. Indictment against the Defendant for exercising the Trade of a 129. *Woollen-draper*, who pleaded that he was a *Freeman of London*; and upon Demurrer to this Plea, there was Judgment against him.

1 Sand. An *Infant* may bind himself Apprentice, *Cro. Car.* 179. *Huts*, 63. Of Indentures of Apprenticeship, and Covenants therein.
311. and by the Statute 5 *Eliz.* cap. 4. par. 39. he shall be bound by his
Sid. 427. Indenture notwithstanding his Non-age. Owners of Ships or Vessels,
S. P. or any Householder using the *Fishing Trade*, may take Apprentices for 10 Years or under; but this must be by Indenture enrolled in the Town Corporate, where the Apprentice lives; or if he doth not live in such Towns then in the next Corporation: Therefore where a *Mariner* took an Apprentice by Indenture, with a Bond for Performance

1 Lurw. of Covenants; and after he ran away, the Bond was put in Suit, and 474. the Defendant pleaded this Statute, and that the Indenture was not enrolled, &c. the Court inclined against the Plaintiff.

2 Roll. The Indentures of an Apprentice in *London* must be enrolled with- Rep. 305. in a Year, &c. and if the Default is in the Master, then the Apprentice may sue them out, and shall be discharged; but if the Fault is in the Apprentice for not coming before the *Chamberlain*, he shall not be discharged.

3 Bull. A Bond given by an Apprentice to deliver up a just and true Ac- 179. count, is good, because 'tis for a collateral Matter, and not within the Words of the Statute 5 *Eliz.* cap. 4. which makes all Covenants and Bargains, for having, taking or keeping an Apprentice, void.

3 Mod. An Order of two Justices confirmed at Sessions for putting a poor Boy Apprentice in Husbandry was quashed, because by the Statute he is to be put out by the *Churchwardens*, and Overseers of the

Poor,

Apprentices to Trades. Poor, with the Approbation of two Justices; and the Churchwardens were not named in the original Order.

The Churchwardens, &c. have Power to place out poor Children, therefore they are proper Judges of Persons who are fit to be their Masters; and those are all Persons who by their Profession or Manner of Living have Occasion to keep Servants: And it was usual formerly, that if a Master refused to take such Apprentice, he was bound over to the Assizes, &c. but now by the Statute, *upon the Oath of* * 8 & 9 *one Churchwarden*, before two Justices, that the Master refused, he is to forfeit 10*l.* to be levied by Virtue of a Warrant of those Justices, to the Use of the Poor, &c. but an Appeal lies to the Sessions, whose Order is final, W. cap. 30.

Therefore where a poor Girl was put out to a Merchant by the Order of two Justices, who appealed, that Order was discharged, because the Sessions did not think it proper to place out such a Girl to a Merchant; and these Orders being removed into B. R. the Court confirmed the Order of Sessions, because an Appeal being given to them from the Order of the two Justices, they are now the proper Court to determine who is fit to receive, or not to receive Apprentices. 2 Salk. 241.

Of discharging Apprentices, and of the Death of the Master.

Upon the Complaint of the Master to one Justice, he may reconcile the Difference between him and his Apprentice, if he can; but if not, and he shall find the Fault to be in the Apprentice, then he may send him to the House of Correction; but if the Fault be found in the Master, then the Justice may bind him over to the Sessions, and there four Justices under their Hands and Seals may discharge him, which must be enrolled by the Clerk of the Peace.

It has been held that there is no express Authority given by any Law to send a bad Apprentice to the House of Correction, nor to discharge him from his Master, if the Fault is in him (the Apprentice) as there is, if the Fault is in the Master; but the Sending a bad Apprentice to the House of Correction, seems to be warranted by the Statute 7 Jac. cap. 4. made for the erecting such Houses to set idle People to work, which is rather an Enlargement than a Restraint of the Power of the Justices, for they cannot punish a bad Master; 'tis true, they may discharge the Apprentice from him, but they may either punish or discharge a bad Apprentice; and the Sessions have originally discharged many bad Apprentices, without any previous Application to one Justice.

An Apprentice being chargeable to a Parish, and his Master being dead, two Justices made an Order to send him to the Administrator, charging him to provide for him; and upon an Appeal that Order was confirmed, and both the said Orders being removed into B. R. it was objected that the Power of the Justices extended only to the Master, and not to his Administrator; for the Justices cannot try whether the Administrator hath Assets or not, neither can they send the Apprentice to the Administrator, if he lives in another County; and if the Administrator should happen afterwards to be poor himself, the Parish must be charged with this Apprentice, if sent to him by such Order: 'Tis true, if there were Covenants in this Indenture to oblige the Administrator, it might be otherwise, but there being no such, the Order was quashed. Show. Rep. 105.

Ad-
Poor

Adjudged that the Master * assigning, and the Apprentice himself^{But by the Custom of London he may be turned over to another.} consenting, will not make him an Apprentice to the *Assignee* within the Statute 5 *Eliz. cap. 4*.

A *Turkey Merchant* trading in Cloth thither, employed Cloath-^{Whatshall be exercising a Trade.}workers in his House who had been Apprentices to that Trade for seven Years, and he provided Materials for them to make Cloth, and constantly paid their Wages every Week, but he was never Apprentice to that Trade; the Chief Justice *Holt*, and two more Judges against the Opinion of the fourth, held this was Exercising a Trade within the Statute: 'Tis true, the private Exercising a Trade is not within that Law, but where 'tis used for Profit and Gain, and not confined to a particular Family, that is an Exercising a Trade within the Statute.

The Defendant was found Guilty upon an *Indictment* for *enticing*^{Enticing an Apprentice to leave his Master's Service; but the Judgment was set aside, because this is a private Injury, for which an Indictment will not lie, but an Action of the Case, per quod servitium amisit.} an Apprentice to leave his Master's Service; but the Judgment was set aside, because this is a private Injury, for which an Indictment will not lie, but an Action of the Case, *per quod servitium amisit*.

Mod. Ca. 88. 'Tis true, an Indictment will lie for *enticing* a Servant or Apprentice to *embezil* his Master's Goods, but a Conviction for that Offence was set aside, because it was not set forth in the Indictment that the Apprentice did *embezil* any of the Goods, for there must be some Fact done in Pursuance of the Enticing.

21. H. 8. By the Statute 21 *H. 8.* 'tis Felony in a Servant to go away with^{Felony in Servants to go away with their Masters Goods.} his Master's Goods, to the Value of 40s. with an *Intention* to *embezil*, or to *steal* them; this Statute extends only to Servants above 18 Years old, but not to Apprentices.

But in such Case the Goods must be delivered to him to keep by the actual Delivery of the Master; therefore if the Master delivers to him a Bond to keep, and the Servant afterwards receives the Money, this is not Felony, because he did not receive the Money by the actual Delivery of the Master.

3 Inst. 105. The Law is the same if the Master delivers Cattle to his Servant to look after, and he sells them, &c. and runneth away with the Money; this is not Felony, for he had not the Money by the Delivery of the Master.

12 Anna cap. 7. But now by a late Statute, 'tis Felony in a Servant to imbezil or make away his Master's Goods above the Value of 40s. and this without Benefit of Clergy; but this Statute doth not extend to Apprentices.

Salk. 68. Adjudged that what an Apprentice gains is for the Use of his Master, tho' he is only an Apprentice *de facto*, and not actually bound by any Writing.

7 Geo. cap. 13. All Contracts by or between any Persons who shall exercise the^{Journey-men Taylors.} Art of a Taylor, or Journeyman Taylor, within the Bills of Mortality, for advancing their Wages, or for lessening their usual Hours of Work, are declared void; and if they enter into, or knowingly are concerned in any such Contract, the Offender being convicted thereof, upon the Oath of one Witness before two Justices, they may commit him to the House of Correction, there to be kept at hard Labour not exceeding two Months, or to the common Gaol, as they shall see Cause, there to remain, without Bail, for two Months.

The Information must be exhibited, or the Prosecution must be within 3 Months after the Offence.

The Hours of working shall be from six in the Morning till eight at Night, excepting half an Hour for Breakfast, and an Hour for Dinner; and the Wages shall be from the 25th of March till the 24th of June 2 s. per Diem, and for the rest of the Year 1 s. 8 d.

Two Justices, upon Complaint, &c. for Wages, may summon the Plaintiff offending, &c. and by their Warrant may levy it by Distress, &c. and for want thereof may commit, &c. to the Common Gaol without Bail, till Satisfaction made.

Journeyman Taylors within the Limits aforesaid being retained to work, and departing before the End of the Term for which they are retained, or before the Work is finished; or who shall refuse to work after Request by any Master Taylor, for the Wages and Hours before mentioned (without some reasonable Cause to be allowed by two Justices) and being lawfully convicted thereof, shall be sent to the House of Correction, there to be kept to hard Labour for any Time not exceeding two Months.

A Taylor, or any Person professing that Trade, giving greater Wages than as aforesaid, and being lawfully convicted, as aforesaid, of the said Offence, shall forfeit 5 l. one Moiety to the Informer, the other to the Poor, &c. And the Servant or Journeyman taking greater Wages, and being thereof convicted as aforesaid, shall be sent to the House of Correction, there to be kept to hard Labour for any Time not exceeding two Months; all Retainers, Promises or Securities for greater Wages shall be void.

But where an Agreement is made for more Wages, to work before or after the said Hours limited, or to be limited, in such Case more Wages may be paid and received.

An Appeal lies to the next Quarter-Sessions from the Order of the two Justices, giving six Days Notice, whose Determination shall be final, and they may give Costs to either Party.

Shoemakers.

Journeyman Shoemaker, or any Person hired as such within the Bills of Mortality, being accused by his Master employing him of having fraudulently purloined, sold, pawned or exchanged any Boots, Shoes, Slippers, Leather cut, Lace, Lasts, or other Materials for making Boots, &c. not being the proper Goods of the Person accused, shall by a Justice of the County where the Offence shall be done, or where the Party accused doth reside, be summoned, or by Warrant commanded to be brought before him; and on his Appearance, or Default to appear, the Justice may examine the Fact with which the Party is charged, and upon Confession, &c. or Proof on Oath by one Witness, he may convict the Offender, and award the Party griev'd reasonable Damages for his Loss and Charges, which if not immediately paid, then it may be levied by Warrant by Distress and Sale, &c. and for want of sufficient Distress, then to cause the Offender to be whipp'd in the Parish where the Offence was committed; and if afterwards he shall be convicted of a second Offence, then to be sent to the House of Correction, there to be kept to hard Labour for any Time not exceeding a Month, nor under 14 Days.

** Complaint being made on Oath.*

Justice may award Satisfaction to the Party.

He who buys, or takes Boots, Shoes, &c. at pawn, shall make Satisfaction.

He who buys, receives, or takes in Pawn any Boots, &c. or Materials for making them, not being the proper Goods of the Seller or

Pawner

Pawner; or he who offers to sell or pawn them, shall for every Offence, being convicted thereof in Manner as aforesaid, make Satisfaction within two Days after it shall be awarded, otherwise his Goods shall be subject to a Distress; and for want of Distress, to the like Punishment as aforesaid.

Two Justices within the Bills of Mortality, may upon Complaint on Oath, issue out their Warrant to search the Houses of suspected Persons in the Day-Time who have bought or taken such Goods at Pawn, and on Refusal may break open the House, &c. opposing such Search forfeits 10*l.* to the Informer suing for it by Action of Debt, in the Courts in *Westminster-Hall* within two Months; and if upon the Search, or the Oath of one Witness, it shall appear that such Person hath the Goods, the Justice shall cause them to be restored, and Satisfaction to be made to the Owner for detaining and getting them; the Party refusing shall be subject to the like Punishment as aforesaid.

Any Person employed by one Shoemaker, and retained by another before he hath finished his Work, being convicted on Oath before one Justice, shall be sent to labour in the House of Correction, not exceeding one Month.

There lies an Appeal to the next Sessions, giving eight Days Notice, whose Determination shall be final.

C H A P. LIX.

Leather.

- 1 Jac. 22. **N**O Person, by himself or other, shall gash or cut the Hide of any Ox, Bull, Steer, or Cow, upon Pain to forfeit twenty Pence for every Hide. §. 1.
Gashing.
- ‘ No Butcher shall water any Hide, but in *June, July*, or *Aut-Watering*, *gust*, nor offer to Sale any Hide putrified, or rotten, or forfeit three Shillings and four Pence for every such Hide.
- 1 Jac. 22. ‘ No Butcher shall by himself, or any other, use the Trade of a Tanner, while he useth the Trade of a Butcher, upon Pain to forfeit 6*s.* 8*d.* *per Diem*.
- 1 Jac. 22. ‘ No Person shall tan any Leather, nor take any Benefit or Advantage by that Craft, except he have been brought up and instructed therein as an Apprentice, or Covenant, or hired Servant, by seven Years; and except the Wife, and such Person as shall marry the Wife or Daughter to whom he shall leave a Tan-house and Fats; and except such Son or Sons as have used the Trade four Years, upon Pain to lose the Leather, or the just Value thereof. §. 2.
Who may
be a Tan-
ner.
- 1 Jac. 22. ‘ No Person using the Trade of a Tanner shall use any Trade exercised in the Cutting of Leather, upon Pain to forfeit the Leather, or just Value. ex-
Trades.
- 1 Jac. 22. ‘ No Person shall buy, contract for, bespeak any rough Hide, or Calve-skin, except such Person as may use the Trade of a Tanner, and shall tan the same; or such Persons as shall tan the same, except salt Hides for Ships, upon Pain to forfeit the Leather, or just Value. Buying.

- §. 3. *Forefalling.* ' No Person shall forestal Hides, or buy them, but in Fair or Market, except of the Owner that killed for his own Use, upon Pain to forfeit for every Hide 6s. 8d. 1 Jac. 22.
- §. 4. *Buying Leather.* ' No Person may buy, contract for, or bespeak any unwrought Leather, but he that will and shall work out the same into Wares, upon Pain to forfeit the Leather, or Value thereof. See a Case upon this Paragraph *postea*. 1 Jac. 22.
- Carrier.* ' Upon which Clause a Case was *M. 16 Car. 1 Cro. 425. Lib. meo* M. 16 Car. 1 Cro. 425.
inter Lodge & Holliwel, where a Carrier bought Hides, and curried them with Oil and Tallow, and Things necessary; and after shaved and died them, and sold them to a Shoemaker; and it was adjudged, this was an Offence against this Clause of the Statute; and is against the Meaning of 3 & 6 E. 15, & 27 El. 16, & 5 El. 8. For a Carrier may not buy and sell by Wholesale.
- Leadenthal Girdlers.* ' Persons using to convert Leather into Wares, may buy at *Leddenhall*, and Girdlers may sell their Necks and Shreds of tanned Leather. 1 Jac. 22.
- Lime.* ' No Person using Tanning, shall suffer a Hide or Skin to lie until it be over limed.
- Tanner.* ' Nor shall put any Hide or Skin in Tanfats, before the Lime be well soaked and wrought out of them.
- §. 5. *Material.* ' Nor put or use any Stuff about the tanning of Leather, but Ash-Bark, Oak-Bark, Tapwort, Malt, Meal, Lime, Culverdung, or Hen-dung.
- Parching.* ' Nor suffer Leather to lie or hang wet until it be frozen.
 ' Nor dry or parch the Leather with Heat of Fire, or the Summer Sun.
- Woozes.* ' Nor shall tan a putrefied or rotten Hide.
 ' Nor suffer the Hides for utter Sole-Leather to lie in the Woozes any less than Twelve Months.
 ' Nor the Hide for upper Leather, to lie in the Woozes less than nine Months.
- Forfeits.* ' Nor shall negligently work their Leather in the Woozes, but shall renew and strengthen their Woozes as often as is requisite.
 ' Upon Pain to forfeit every Hide of Ox, Steer, Bull, or Cow, otherwise wrought and put to Sale, or the Value.
- Raising with Mixtures.* ' No Persons shall raise with any Mixtures any Hide for Bark, Bend Leather, Clouting Leather, or other Sole-Leather, except the Hide be sufficient for State, Largeness, or Growth, to be tried by the Triers, upon Pain to forfeit it.
- §. 6. *Searching.* ' None shall put to Sale any tanned Leather, red, and unwrought, before it be searched and sealed in some open Fair or Market; nor until it be searched and sealed according to that Statute, upon Pain to forfeit for every Hide or Piece of Leather 6s. 8d. And for every Dozen of Calves Skins, and Sheeps Skins, 3s. 4d. and of the same Hide, Skins, and Leather, or the Value. But this Clause touching search and sealing of such Skins, is repealed by 4 Jac. 6. 1 Jac. 22. 4 Jac. 6.
- Skins.* ' So as the same be made into Wares in England.
- §. 7. *Not well tanned, or dried.* ' If any Tanner put to Sale any Leather, nor sufficiently tanned or dried, and the same be found so by the Triers, he shall forfeit the whole Hide, Back, or Skin, if it be wholly defective, or if Part defective, that Part to be cut by the Triers. 1 Jac. 22.

- 1 Jac. 22. No Persons shall set their Fats in Tan-hills, or other Places ^{Under Tanning.} where the Woozes or Leather may take any unkind Heat.
- 1 Jac. 22. Nor put any Leather in hot or warm Woozes.
- 1 Jac. 22. Nor tan any Hide, Calves Skin, or Sheeps Skin, with warm or hot Woozes; or if he do, shall forfeit for every such Offence 10 l. and shall stand in the Pillory three Market Days, in a Market Town, next the Place of the Offence.
- 1 Jac. 22. The Forfeiture of forestalling of Oaken Bark. See Tit. Fore- ^{§. 8. Forestall- ing.} stalling.
- 1 Jac. 22. None using the Trade of a Currier, shall use the Trade of a Butcher, Tanner, Cordwainer, or other Trade using cutting of Leather, upon Pain to forfeit 6 s. 8 d. for every Hide or Skin he shall curry.
- 1 Jac. 22. No Currier shall curry any Leather in any other than his own ^{§. 9. Currier, Place.} House, situate in a Corporate or Market Town.
- 1 Jac. 22. Nor shall curry any Leather, not sufficiently tanned and dried, after its wet Season: Nor in its wet Season, he shall not use Urine, or other deceitful Thing to corrupt or hurt it.
- 1 Jac. 22. Nor curry any Leather meet for utter Sole-Leather, but with ^{Materials} hard Tallow, and of that, as much as the Leather will receive.
- 1 Jac. 22. Nor curry any Leather meet for Upper Leather, but with good Stuff, fresh and not salt, thoroughly liquored till it will receive no more.
- 1 Jac. 22. Nor burn or scald any Hide or Leather in the Currying.
- 1 Jac. 22. Nor shave any Leather too thin, nor gasb or hurt in the Sha- ^{Gasb.} ving, or by other Means, but shall work it sufficiently in all Respects.
- 1 Jac. 22. Upon Pain to forfeit for every Offence (except in Gashing, and ^{Forfeits.} Shaving) 6 s. 8 d. And the Value of every Hide and Skin so marred, by his evil Workmanship; and for every Offence by Gashing and Shaving, double so much to the Party grieved, as the Leather shall be impaired by the Judgment of the Wardens of the Curriers, and Wardens of the Company whereof the Party grieved shall be.
- 1 Jac. 22. No Cordwainer or other dwelling in London, or within three ^{§. 10. London, Cordwain- ers.} Miles, using wet Leather, shall put any Leather to be curried, but to one free of the Company of Curriers of London, upon Pain to forfeit the Leather, nor use any curried Leather before the same be searched and allowed by the Curriers, and sealed.
- 1 Jac. 22. Every Currier shall curry Leather, brought to him, within eight ^{Speed.} Days in Summer, and sixteen Days in Winter, the Party bringing good Stuff for liquoring it, and that in the Presence of the Party bringing it, if he or his Servant will be present, and shall not refuse to curry it; upon Pain of 10 s. for every Hide or Piece not well and speedily curried, to the Party grieved.
- 1 Jac. 22. The Wardens of the Curriers, or such as they shall appoint, shall try and seal all curried Leather, within a Day after Currying, by any of their Company, and Request; taking a Penny for a Dick-er, and a Penny for six Dozen of Calves Skins, or forfeit for every Hide 6 s. 8 d.
- 1 Jac. 22. Cordwainers, &c. shall make no Shoes, Boots, Buskins, Start- ^{§. 12. Cordwain- ers.} ups, Slippers, or Pantofles of English Leather wet curried (other than Deer-skins, Calves-skins, Goat-skins, made and dressed like Spanish Leather) but of Leather well tanned and curried, or well tanned and well sewed with good Thread, well twisted and wax-

- ed, and Wax well refined, and Stitches hard drawn with Hand-Leathers, without mixing the over Leather, *i. e.* Part Neat, Part Calve.
- Nor put into any Shoes, &c. Leather made of Sheep-skin, Bull-hide, or Horse-hide.
- Nor into the upper Leather of any Shoes, &c. Nor into the neather Part of any Boots (the inner Part of the Shoe excepted) any Leather called Wombs, Neck, Shank, Flank, Powl, or Cheek.
- Nor put into the utter Sole, any other Leather than the best of Ox, or Steer-hide.
- Nor into the inner Sole, any other than Wombs, Neck, Powl or Cheek.
- Nor into the Trefwels of any double soled Shoes, other than the Flanks of the Hide.
- Nor shall make or put to Sale in any Year, between the last Day of September, and the twentieth Day of April, any Shoes, fit for one above four Years old, any Boots, &c. wherein shall be any dry *English* Leather, other than Calve and Goat Skins dressed like *Spanish* Leather.
- Nor shall shew with Intent to put to Sale any Shoes, &c. upon Sunday, upon Pain to forfeit for every Pair of Shoes, &c. 3 s. 4d. with the full Value thereof.
- §. 13. Companies searching. The Master and Wardens of the Companies of Cordwainers, Curriers, Girdlers, and Sadlers in London, upon Pain of 40 l. shall every Quarter of the Year, at the least in London, and within three Miles thereof, where any Artificers cutting Leather dwell, may enter, search and seise, if Wares be not made of tanned Leather; and according to that Act, each Company to search those of their own Trade only. 1 Jac. 22.
- §. 14. London. Searchers. The Mayor and Aldermen, upon Pain of 40 l. shall yearly appoint eight out of those four Companies, whereof one shall keep the Seal to seize and seal Leather in London, or three Miles next it. 1 Jac. 22.
- All Mayors, Bailiffs, and Head-Officers of all Cities, Boroughs, and Towns; Lords of Liberties, Fairs and Markets, upon Pain of 40 l. (a Moiety to the King, and the other Moiety to the Prosecutor) shall chuse and swear two or more Persons yearly, to search and view Leather; who shall search and have a Mark, and therewith mark Leather that is sufficient. Who if they find any Leather not well tanned or curried, or Shoes, Boots, &c. not well made, may seize the same, and retain them until tried by the Triers. 1 Jac. 22.
- §. 15. London, Triers. The Lord Mayor shall within six Days after Seizure, choose six; two Cordwainers, two Curriers, and two Tanners, who upon Oath shall the second or third Market Day try it. 1 Jac. 22.
- Mayors. Other Mayors, Bailiffs, Head-Officers, and Lords, with convenient Speed shall elect Triers, who upon Oath, upon some Market-Day, within fifteen Days after Seizure, try, &c. and shall do their Offices upon Pain of 5 l. for every Default. 1 Jac. 22.
- Forfeits. The Lord Mayor, Mayors, &c. not electing Triers, shall for every Default forfeit 5 l.
- §. 16. Searchers. Searchers and Sealers of Leather in London, shall be nominated every Year, and shall not continue above two Years, and shall not be chosen again within three Years, upon Pain to forfeit 10 l. for every Month using that Office. 1 Jac. 22.

- 1 Jac. 22. ' The Searcher or Sealer refusing to take the Office, or refusing to search or seal Leather well wrought, or shall seal any that is insufficient, shall forfeit 10*l.* for every Offence.
- 1 Jac. 22. ' All Leather to be brought into *London*, or within three Miles, shall be brought to *Leaden-hall* before it be perused, and there searched and registered, paying half Fees: But it extends not to Leather brought to *Bartholomew* or *Southwark* Fair. *London*
- 1 Jac. 22. ' No tanned Leather shall be sold in *London*, before searched and sealed, upon Pain of Forfeiture thereof, or the full Value. *London*
- 1 Jac. 22. ' If any withstand or deny any Entry, and Search to be made in their Houses, or of their Goods made of Leather, or will not suffer a Seizure, shall forfeit 5*l.* every Time. *Offence*
- 1 Jac. 22. ' The Searchers and Sealers appointed, shall register all Leather bought and sold, with the Names of Parties, Prices, and Particulars, taking of the Seller for every ten Hides, &c. two Pence, and two Pence for every six Dozen of Calves-skins or Sheep-skins. *Registry*
- 1 Jac. 22. ' None shall sell, exchange, or put away any tanned Leather, nor buy or carry the same out of the Fair before it be registered, upon Pain of Forfeiture.
- 1 Jac. 22. ' If any Currier in *London*, or within three Miles of it, currie any Leather insufficiently tanned, or do not currie Leather sufficiently, he shall forfeit the Wares, and the just Value thereof. *London Curriers*
- 1 Jac. 22. ' If any Shoemaker, Cordwainer, or Cobler in *London*, or within three Miles of it, put any tanned Leather into any Shoes, &c. or other Things made of tanned Leather, that is not sufficiently tanned. *London Artificers*
- 1 Jac. 22. ' Or put in any curried Leather into any Shoes, &c. not sufficiently curried, tanned and sealed.
- 1 Jac. 22. ' Or make any Boots, &c. or other Things made of *English* tanned Leather, in other Manner than as abovesaid.
- 1 Jac. 22. ' Or if any Shoemaker, Sadler, or Artificer, using, cutting, or working of Leather, make Wares of tanned Leather not sufficiently tanned; or of tanned and curried Leather not sufficiently tanned and curried as abovesaid.
- 1 Jac. 22. ' Or do not make their Ware substantially and sufficiently. Every Person so offending, shall forfeit the Wares or just Value.
- 1 Jac. 22. ' No Person shall in *London*, or within three Miles of it, sell any Wares appertaining to any Artificer, using cutting of Leather, but in open Shop, Fair or Market, upon Pain of forfeiting the Wares sold, and 10*l.* for every Time. *London Markets*
- 1 Jac. 22. ' All Persons using cutting of Leather in *London*, or within three Miles, shall be under the Search of, &c.
- 1 Jac. 22. ' All Penalties of Money (except what is otherwise disposed) shall be divided in three Parts; one Part to the King, another to the Prosecutor, in any Court of Record; a third Part to the City, &c. where, &c. *Penalty Money*
- 1 Jac. 22. ' All Wares of tanned and curried Leather in *London*, or within three Miles, forfeited, &c. to be brought into the Guildhall of *London*, and paid one Part to the Seizer, the second Part to the Chamber, and the third Part to the Poor; as the Mayor and Aldermen shall think fit. *London*
- 1 Jac. 22. ' All Shoes, &c. and other Things made of Leather, in any Place above three Miles from *London*; if in a City, &c. shall be brought to the Common-Hall; if no Hall, to an open Place and prized: One Part

Part to the Poor, and to Works of Charity, the second Part to the City, &c. or Lord, the third Part to the Seizor.

Forfeited Wares shall not be sold to any that will sell the same again; 1 Jac. 22.
or the Seller shall forfeit for every Part thereof 3 s. 4 d.

§ 23. Leather. The Hides and Skins of Ox, Steer, Bull, Cow, Calf, Deer Red and Fallow, Goats and Sheep, being tanned or tawed, and every Salt Hide, shall be reputed Leather. 1 Jac. 22.

§ 24. Judges. Justices of Peace, Mayor, &c. and Head-officers in their Sessions, Leet, or Law-day, shall hear and determine all these Offences, and by their Discretions examine the Persons suspected. 1 Jac. 22.

§ 25. Dry Currying. Dry currying and frizing, shall be construed to be dressing and currying after the Manner of Spanish Leather; and all Artificers (other than Shoemakers, between the last Day of September, and the twentieth Day of April) may use it as before the making of that Act; so as it be well and sufficiently curried and dressed. 1 Jac. 22.

§ 26. Officers. Every Controller, Customer, Surveyor, or Collector of Tonnage, Poundage, or their Deputies, or any other Persons bearing or knowing of any Leather to be transported from any Place within his Office, and do not endeavour to seize it; or being transported, do not disclose it within forty Days after their Knowledge or Hearing, in some Court of Record; shall for the first Offence lose 100 l. and for the second, his Office. 1 Jac. 22.

Certificates. Every Officer that shall make a false Certificate of the Arrival of any Leather in any Port, Creek, or Place, shall forfeit one Hundred Pounds. 1 Jac. 22.

§ 27. Licenses. All Grants and Licenses obtained to dispence with any Thing in the Statute, shall be void. 1 Jac. 22.

§ 28. Statutes. The Statute of 5 El. is repealed, and all Acts thereby repealed are repealed. 1 Jac. 22.

The Statute 5 & 6 E. 6. cap. 15. touching Ingrossing of Leather, is yet in Force; for the Statute of 1 Ma. cap. 8. which repealed it, is repealed by 5 El. 8. Which Statute of 5 El. 8. is repealed by 1 Jac. 22. 426.

But that Statute doth also repeal all the Statutes repealed 5 El. 8. But the Justices of Peace have no Power to enquire of Offences against 5 E. 6. 15. Also the Statute of 27 El. 16. is yet in Force; yet see 4 Jac. 6. which recites that it appears 4 Jac. 22. That the true Intent and Meaning thereof was to make void all former Statutes made concerning Tanners, Curriers, Shoemakers, and other Artificers occupying the cutting of Leather; and to comprehend in one Statute, all Things mentioned in the former Statutes, &c. 4 Jac. 6.

§ 29. Transportation. None shall carry or transport, or cause, &c. out of England into Scotland, Ireland, or any the Isles belonging to England, or into any Parts beyond the Sea, the Skins or Hides tanned or untanned of any Ox, Steer, Bull, Cow, or Calf, otherwise than is thereby directed. 14 Car. 2. c. 7.

Importing. No such Hide taken from the Body of such Beast, in any Island belonging to England, except Ireland, shall be carried out of that Island, into any Place but into England, upon Pain to forfeit for every such Offence double the Value thereof. 14 Car. 2. c. 7.

Penalty of Transportation. Every Person so transporting any Hides or Leather, except Calves-skins, and Sheeps-skins dressed in the Wool, and found guilty thereof, shall be disabled to trade in Leather, and for every Offence forfeit 500 l. 14 Car. 2. c. 7.

§ 30. Sale in Market. All red tanned Leather made of any Hides or Skins of the Beasts aforesaid, shall be bought only in open Market for Leather, upon Pain for every Offence to forfeit the Leather, or Value thereof; and the Contract to be void. 14 Car. 2. c. 7.

§ 31. Searched. All such Leather shall be searched and sealed before it be put to Sale, and upon Sale registred, and a true Entry thereof made by the Buyer and Seller, both to be present; and their Names, and Places 14 Car. 2. c. 7.

Places of Abode to be entered; upon Pain, that the Buyer or Seller not doing the same, shall for every such Offence, forfeit the Value thereof.

14 Car. 2. c. 7. Boots, Shoes and Slippers, may be transported. § 32. Boots.
 14 Car. 2. c. 7. All Justices of Peace, Mayors, and Chief Officers of Corporations, may as well by Land as by Water, search for, and seize all Leather § 33. Searching and Seizing.
 and raw Hides, wrought or unwrought, cut or uncut, packed or unpacked, intended to be transported beyond Sea, or into Scotland; except Calves-skins and Sheeps-skins, as aforesaid.

14 Car. 2. c. 7. Every Tanner who shall shave, cut, and rake their Upper Leather Hides all over, and the Necks of the Backs and Butts, shall forfeit the same; and Searchers and Sealers may search it. § 34. Tanners shaving.

14 Car. 2. c. 7. The Penalties shall be recovered by Action of Debt, Bill, Plaint or Information (amongst others) in any Court or Courts of Record, in the City, Town, County or Place, where the Offence is committed; wherein no Wager, &c. and shall not be removed out of the same. The Moiety to the King, the other Moiety to the Informer. Penalties.

14 Car. 2. c. 7. All Exportation and Transportation contrary to the Act, is declared a common Nuisance. Nuisance.

By the Statute 1 Jac. cap. 22, 'tis enacted, That no Man shall buy Leather unwrought, but he who shall make it into Wares; an * Information was brought on this Paragraph against a Currier, for buying and selling Leather tanned and not made into Wares; and it appeared upon the Evidence at the Trial, that he bought Hides tanned, which he shaved, coloured and glazed, and then sold them; and this was adjudged to be an Offence within the Statute, because this Operation was not Making it into Wares.

9 Ann. cap. 11. By the Statute 9 Anne, cap. 11. the aforesaid Act 1 Jac. is enjoined to be observed in every Thing not altered by this Statute.

Now the Alterations made by this last Act relate to raw Hides and Calve-skins, the first must not be gashed, under the Penalty of 2 s. 6 d. per Hide, and 1 s. per Calf-skin to the Poor, and to the Seisor or Informer. One Justice may give an Oath to a subordinate Officer of

Duty on Hides, who shall receive any Salary in respect of his Office before he acts, for the faithful Execution thereof. Execution

Shaving such Hides or Skins, by which they are impaired, or the Duty diminished, * Forfeiture of the Hides and Skins to the King and the Informer. * Justices may mitigate, so as

the Penalty be not reduced to less than a fourth Part, besides Costs and Charges in the Prosecution.

Those who dress Hides and make Vellum, must give Notice in Writing to a proper Officer of their Names and Places of Abode, and of their Tankhouses, Warehouses, Yards, Mills, Pits, Fats, and so they must if they change their Tan-yards, &c. Penalty is 50 l. one Third to the King and two Thirds to the Informer.

10 Ann. cap. 26. Several additional Duties are laid on Hides, &c. See both the said Statutes at large, for the Justices may hear and determine Offences against both, by Summoning the Offender and Witnesses on either Side, and examining them on Oath: The Prosecution must be within three Months after the Seizure or Offence, and an Appeal lies to the Quarter-Sessions, and no Certiorari shall be allowed, but the Justices may mitigate the Forfeitures, so as the Penalty is not reduced to less than

a fourth Part, and so as the Charges of the Prosecution be allowed over and above such Mitigation.

No Information shall be brought in the Courts of *Westminster* for any of the Offences in those Statutes, because they are cognisable by the Justices, &c.

By the said Stat. 9 *Anna*, one Justice may give an Oath to Tanners^{9 Ann. cap. 11.} and Dressers of Hides, that they did within two Days after the Taking the Hide out of the Liquor, &c. make a true Entry with the proper Officer, of the Number and Quality of the Hides, &c. so taken out to be dried, and that they gave Notice to the proper Officer two Days before the Removal of the Hides.

Owners or Occupiers of Tan-yards refusing a proper Officer to enter, forfeit 10 *l.* to the King and the Informer.

Tanners, &c. using any private Tan-yard, or not giving timely Notice of taking the Hides out of the Liquor, or carrying them away, or concealing, or causing them to be concealed, forfeit 20 *l.* and the Hides, &c. or the Value thereof, &c. to be mitigated, *ut supra*: Prosecution must be within three Months, and an Appeal lies to the next Quarter-Sessions.

Tanners, &c. not paying the Duties with which Hides are charged, forfeit double the Duty; and sending, delivering, or carrying away Hides, &c. before the Duty is paid, forfeit likewise double the Value.

Tanners not keeping just Scales and Weights, or not permitting Hides, &c. to be weighed, or removing them before the Duty is charged and the Skins marked, forfeit 50 *l.*

Collar-makers, Bridle-cutters, Glovers, and others who dress Skins in Oil, Allom, Salt or Meal, and make them into Wares, are Tawers and Dressers within this Act.

Officer taking Fee or Reward for any Entry, Permissions, Certificates or Marks, forfeits 5 *l.* to the Party grieved for every Offence.

The Judgment of the Justices is final.

CHAP. LX. *Vide XXXII.*

London.

The Highways and Streets about *London*, being much impaired by excessive Carriages, the Court made several Orders for Redress, which were fit to be put in Execution, *viz.*

Ord. 15.
Jan. 15.
Jac. lib.
Sep. pa.
Mi.

‘ **W** Hereas since his Majesty’s late Proclamation against Carriages and Waggoners that bring great Loads to the City of *London*, from many Parts of this Kingdom with above five Horses in a Team, to the Decay of his Majesty’s Highways, many have notwithstanding by Subtilty instead of Horses, drawn their said Load with Oxen and Horses above the said Number, thinking thereby to avoid the Danger. It is now ordered and so determined, That from henceforth three Oxen shall be taken in the Case for two Horses, and four Oxen for three Horses, and so after the Rate.

‘ And afterwards in the late King’s Time it was ordered, That all Waggoners be prohibited to travel to *London* with four Wheels

Ord. 5 Sep.
9 Car. in
1. Sef. pa.
Mi.

Wheels in their Waggon, and every Offender therein to be convicted before the next Justice of Peace.

35 Eliz. 6. No new Buildings shall be erected for Habitation, within three Miles of *London*, nor any Building shall be divided or converted to several Habitations there, except such Houses shall be fit for the Dwelling of such a Person as heretofore hath been assessed to the Subsidy of five Pounds in Goods, or three Pounds in Lands, at the Assessment next before the said Building or Division, or as shall be adjudged by the two next Justices of Peace (by Writing under their Hands and Seals, to be presented at the next Quarter-Sessions) to be fit and able to be assessed in the Subsidy. 35 *Eliz. 6.*

The two next Justices of Peace have Power to decide and determine of the Sufficiency and Conveniency of such Houses, and of the Sufficiency of the Inhabitants therein. *Ibid.*

Several Orders were made for the Stopping of Buildings began in *Lincolns-Inn Fields*, 8 Sept. 11 *Jac.* And several other in that Book of the Sessions. *Mid.*

An Order to prohibit any Workmen from erecting any new Buildings in that Part near *Clements-Inn* and *New-Inn*, 28 Aug. 8 *Car.* *Lib. Sess. Pac. Mid.*

An Order for Stay of erecting of new Buildings, according to an Order of the *Star-Chamber*, 20 Octob. 40 *Eliz.* Ord. 2. Octob. 10 *Car.* *Lib. Sess. Pac. Mid.*

For repairing and enlarging Streets in and about *London*, see *Tit. Private Highways.*

C H A P. LXI. Vide XXXIII.

Malt.

2 Ed. 6. 10. THE Constables or Bailiff of any Town, where any deceitful Malts shall be made or mingled, to be sold contrary to the Statute 2 *Ed. 6.* may from Time to Time view and search all such Malt, as shall be made or put to Sale within any of their Towns; and if thereupon they shall find any Malt put to Sale, being evil made, or mingled with evil Malt contrary to this Statute; then the said Constable or Bailiff, so finding any such deceitful Malt, with the Advice of any one Justice of Peace, may cause the same to be sold to such Persons, and at such reasonable Prices, as to the Discretion of the same Justice shall seem expedient. 21 *Jac. c. 28.* & 3 *Car. 4.*

These deceitful Malts be of three Sorts, *scil.* Such as be not well made, or not well dressed or mixed. As,

1. First, If any Barley-Malt shall be made (in the Months of *June*, *July* and *August*, only excepted) if the same Malt shall not have in the Making thereof (*scil.* in the Fat, Floor, Steeping and Drying thereof) three Weeks at the least; and in the Months of *June*, *July* and *August*, seventeen Days at the least. For under such Times the Malt cannot be well made, nor wholesome for any Man's Body; and Malt not sufficiently dried, cannot be kept long, but will be musty, and full of Wevils.

2. Secondly, If any Malts shall be put to Sale which be not well trodden, rubbed, and well fanned.

3. Thirdly, If any Malts be mingled, *scil.* Malt not well made as aforesaid, or made Mow-burnt, or spired Barley, and mixed with good Malt, and so put to Sale.

§. 3.
Two Ju-
stices.

The Justices of Peace at their Quarter-Sessions, (or the more Part 39 Eliz. 16. p. 61 of them) at all Times may suppress and discharge, or restrain the Number of Maltsters; and also may restrain such Persons as they shall think meet, for buying Barley to convert to Malt. And if any Person Lam. 536 shall refuse, disobey, or not perform such Suppressing, Discharge or Restraint, on any Order which the said Justices in their Sessions shall set down touching the same; then, and so often such Person being thereof duly convicted before the Justices at their Quarter-Sessions, or before any two Justices of Peace out of their Sessions (by his own Confession, or by two Witnesses) shall be by the said Justices committed to the common Gaol, there to remain without Bail for three Days, and after that until he shall become bound by Recognizance in forty Pounds to the King's Use, before some one Justice of Peace, to perform and obey such Order, Suppressing, Discharge or Restraint. So that any two Justices of Peace may convict such Offenders (upon their Confession, or by two Witnesses) and then may commit them, as aforesaid; and after any one Justice of Peace may take such Recognizance, as aforesaid.

One Ju-
stice.

Malt da-
maged af-
ter the Du-
ty paid.

If any Quantity of Malt shall be destroyed or damaged by Fire af- 9 Geo. cap. 3. ter the Duties are paid, or shall be damaged by the Casting away, or any inevitable Accident happening to any Vessel or Barge carrying Malt from Port to Port, or put on board for that Purpose, the Proprietors proving the same by the Oath of one or more credible Witnesses, before the *Justices in Sessions*, and by the Oath of the Maltsters or Owners, that the *Duty was paid*, they may grant a Certifi-

Certificate
of the A-
mount of
the Duty.

cate of the Amount of the Duty, and upon producing the same the Collector of the Duty shall repay the Proprietor so much Money as the Sum certified to be paid for the Duty of the Malt so lost shall amount unto; and where the Malt shall not be totally lost, but damaged only, the Justices, &c. on Proof of the Damage and Payment of the Duty, may settle the *Quantum* of the Damage, and give a Certificate under their Hands and Seals of the Sum by them allowed for such Damage; which Allowance where the Malt is *damaged* only, shall bear Proportion to the whole Duty of the Malt so damaged, as it shall bear to the Value of the Malt before it was damaged; and upon producing such Certificate, the Collector shall repay so much Money as the Sum certified will amount to.

Justices
may settle
the Quan-
tum of the
Damage.

Notice
must be
given to the
Collector to
what
Quarter-
Sessions the
Party will
apply.

The Person sustaining such Loss, or his Agent, must give Notice thereof in Writing to the Collector of the Division next to the Place where the Quarter-Sessions is held (to which he intends to apply himself for such Allowance) of such Loss and Damages, and his Intentions to apply *six Days* at least before the Sessions, and shall make his Application for Relief within *one Month* after the Loss or Damage happened.

Where the Justices have once ascertained the Damages or Loss, the same shall never be ascertained by any other Justices.

C H A P. LXII.

Markets and Fairs.

Fair seemeth to be deriued from the Latin, *Feria*, *Nundina* chim §. 1.
semper instar Festi sunt, saith Skinner's Lexicon. Name.

Market seems to be deriued from the Latin, *Merces* or *Mercari*,
saith Skinner's Lexicon.

Fairs were antiently Places of great Resort and Privilege; for by §. 2.
Civil Law, *Nundina* habent publicam securitatem, ut nemo privati Privilege.
debiti causa ibidem possit interpellari, non delicti; which must be un-
derstood of Debts and Offences preceding the Fair; for as to Contracts
there made the Law hath provided a Court of Piepowders, which is
incident to a Fair; and is a Court of Record for the speedy deter-
mining of Differences there arising upon Contracts.

Fairs are accounted Things of Franchise and Privilege, as well as §. 3.
of Profit; and whether they be held and claimed by Charter of the Time of
King, or by Prescription, which supposes a former Charter, they ought Continu-
to be holden for no longer Time, than such Grant or Use will warrant: ance.

And after such Time, what is done there, is not warranted or justi-
fiable, nor amounts to more than a private Transaction, and the She-
riff ought to make Proclamation, That those that have Fairs keep
them no longer than they ought to do; and every Lord of a Fair,
shall at the Beginning thereof, make Proclamation how long the same
is to continue, upon Pain to be grievously amerced to the King: And
if they hold them longer than they ought, they shall be seised into the
King's Hands, until they make Fine for the Offence; and if a Mer-
chant sell Ware after the Time the Fair ought to end, he shall forfeit
to the King double the Value of what is sold, and the Prosecutor shall
have the fourth Part.

27 H. 6. 5. Fairs and Markets on the principal Feasts, viz. Ascension-day, §. 4.
Corpus Christiday, Whitsunday, Trinity Sunday, and all other Sun- Festival.
days. The Assumption of our Lady, All-Saints and Good-Friday,
shall cease from all shewing of Goods and Merchandises, necessary
Viſuals only excepted, upon Pain of Forfeiture of their Goods shewed
the four Sundays in Harvest excepted, and the Fairs or Markets which
are granted to be holden on those Festivals, may be holden within three
Days, before or after.

13 E. 1. c. 5. No Fairs or Markets shall be kept in Church-yards, for the Honour §. 5.
Winch. of the Church. Place.

Buying and Selling again in the same Fair or Market of Cattle for- §. 6.
bidden. See 3 & 4 E. 6. 19. Vide Tit. Cattle. Cattle.

Touching Sale of Horses in Fairs and Markets, and the Duty of the §. 7.
Lord or Owner of the Fair thereabouts, see 1 & P. & M. 7. and Tit. Horses.
Horses, and 31 El. 12.

That such as live in the Country, shall not sell diuers Merchandises §. 8.
there named in Towns, except in open Fairs. See 1 & 2 P. & M. 7. Country.
But the Justice of Peace hath nothing to do therein.

For the Office of Clerk of the Market, see afterwards Tit. Weights
and Measures.

And because Justices of Peace have often to do with Property, and §. 9.
how far it may be deuested by Sale in a Market-Overt, it will be neces- Rules.
sary to add some few Cases touching the same.

London.

1. That in London, every Day in the Week is a Market-day, except Sunday, and a Sale bona fide in a Shop therein any Day of the Week, is good.

2. The Sale in such a Shop must be of Things proper to the Trade of the Shop-keeper, and so a Sale of Plate in a Scrivener's Shop, is not good; and so of every other Trade.

3. If a Sale be of Plate in a Goldsmith's Shop (where it is properly to be sold) it must be publickly and open: For if a Sale be there of Plate in an inner Shop, or behind a Curtain, or a Cup-board, or the Windows be shut, or any Thing else hides it; so that he that passes by cannot see what is done there, it will not alter the Property. All this was resolved H. 38 El. Co. 5. 83. Moor's Rep. p. 360. Evesq; de Worcester's Case. Moor's Rep. p. 624.

4. If a Sale in a Market Overt be covinous, or the Party that buys the Goods knows they were stolen, this Sale alters no Property. 33 H. 6. 5. Co. 3. 78.

5. The King cannot grant to one, that his Shop shall be a Market to alter the Property of a Stranger's Goods, for it is against Law.

6. In a Market or Town where several Things are sold in distinct Places, the Sale ought to be in every Part of the Town, of what is there saleable, as Horses in Smithfield. Moor's Rep. 360.

7. He that pleads a Sale in Markets, must plead it to be done Pleno Mercatu, else it is not good. Moor's Rep. p. 360.

Sale to a Pawn-broker, tho' in his Shop, alters no Property, for 'tis Kelynge
not a Market Overt. 50.

C H A P. LXIII.

Marriage.

ALL Marriages made since One thousand six hundred forty and two, before any Justice of Peace, or otherwise confirmed and made good; and Issues upon Bastardies, or otherwise touching the same, to be tried by Juries. ^{12 Car. 2. cap. 33.}

C H A P. LXIV. Vide XXXIV.

Mariners.

NO Fisherman using the Sea, shall be taken to serve as a Mariner; by the King's Commission, but by the Choice of two Justices of Peace next adjoining to the Place where he is taken. ^{Eliz. 5.}

Two Justices, or the chief Magistrate of any City or Town corporate, with the Consent of two Justices, and the Church-wardens and ^{2 Ann. cap. 6.}

Overseers of the Poor may put Boys Apprentices to the Sea Service, who are above † ten Years old, and likely to be chargeable to the Parish, and whose Parents are already chargeable, and those who beg.

* To Masters or Owners of Ships, till the Age of 21 Years. † By Stat. 4 & 5 Ann. cap. 19. shall not be obliged to take him under the Age of 13 Years.

The

The Church-wardens, &c. must pay the Master 2*l.* 10*s.* when the Boy is bound for Clothing, &c. which the Parish must allow in their Accounts. The Age must be inserted in the Indenture.

Church-wardens, &c. must send the Counterpart of the Indenture to the Collector of the Customs of the Port to which such Master shall belong, who shall enter it, and endorfe the Registry without Fee; the Collector neglecting forfeits 5*l.* to the Poor of the Parish from whence the Boy was bound.

The Collector shall send Certificates to the Admiralty of the Names and Ages of such Apprentices, and the Ships to which they belong, and Protections shall be given them till * eighteen Years old without Fee. * They shall not be pressed or listed in the King's Service till 18.

† Masters of Apprentices, according to 43 *Eliz.* cap. 2. may, with the Consent of two Justices, or chief Officer of the Place where such Boy was bound Apprentice, turn over the Apprentice to a Master of a Ship or Owner, during the Remainder of his Apprenticeship; which Indenture shall be registred and certified as aforesaid, and Protections given till eighteen. † Or their Executors or Administrators may assign the Apprentices.

Every Apprentice so bound shall be conducted to the said Port by the Church-wardens and Overseers, the Charge thereof must be taxed and allowed by a Justice; and being delivered to the chief Constable, he must pay it out of the Gaol and Marshal Money, &c.

Two Justices, and all Mayors and chief Officers, &c. adjoining to such Port to which such Vessel shall arrive, shall have Power to determine Complaints of hard Usage of Apprentices to Sea-Service.

* 39 *Eliz.* cap. 17. Lewd and disorderly Servants, Rogues, Vagabonds and sturdy Beggars, shall be taken up and sent to the Sea-Service, in manner as directed for Vagrants by the Statute 11 *W. 3.* cap. 18.

The Penalties may be levied by Warrant of two Justices of the County, Borough, or Corporate Town, by Distress and Sale, &c.

7 & 8 *W. 3.* cap. 21. see the Act at large. All Registers of Seamen, before their Entrance into such Office, shall take an Oath before the Judge of the Admiralty, or two Justices of the Peace, for their true and faithful Execution of the said Office. And at the Time of his Registering shall bring a Certificate of the Place of his Abode, under the Hands of two Justices of the Peace of that County, and so often as he changes the Places of his Abode, under the Penalty of losing the Benefit of his being registred.

See more for Mariners *Tit. Rogue and Soldier.*

C H A P. LXV. *Vide XXXV.*

Night-walkers.

I. am. 461122. 13 *H. 7.* 10. See *Tit. Watch.* Every Justice of Peace (*Ex officio*, and by the Commission, the first Assignavimus) may cause to be arrested all Night-walkers, be they Strangers or other Persons that be suspected, or that be of Evil Behaviour, or of Evil Fame, and more particularly all such suspected Persons as shall sleep in the Day-time, and go abroad in the Nights: And all such as shall in the Night-season haunt any House that is suspected

suspected for Bawdery, or shall in the Night-time use other suspicious Company; or shall commit any other Outrages or Misdemeanors; and may force them to find Surety for their Good Behaviour. See the Title, *Surety for the Good Behaviour*.

For as one saith, Such Night-walkers (or Night-birds) are ominous, *Psal. 104.* like the Whistler, &c. And such Night-walkings are unfit for honest Men, and more suiting to the Thief (the right Whistler) and to Beasts of the Prey; which come forth of their Dens, when Man goes to his rest.

C H A P. LXVI.

Nusances.

- § 1. *Hemp* ' FOR Nusances in Highways, *vide Tit. Highways. Sect. 27.* 33 H. 8.
c. 17.
' If any Person shall water any Hemp or Flax, in any River, running Water, Stream, Brook, or common Pond, where Beasts be usually watered, he shall forfeit twenty Shillings; a Moiety to the Party grieved, or any that will sue; the other Moiety to the King, to be sued for in any Court of Record.
- § 2. *Leather.* ' Transporting of Leather contrary to 14 Car. 2. c. 7. is declared a 14 Car. 2.
c. 7. common Nufance.
- § 3. *Cattle.* ' Importing Cattle from *Ireland*, declared to be a common Nu- 18 Car. 2.
c. 2. fance.
' No Butcher or his Servant shall slay any Manner of Beast in any 4 H. 7.
c. 3. City, Borough, or Town walled (*Berwick* and *Carlisle* excepted) upon Pain for every Ox 12*d.* and for every Cow and other Beast 8*d.*

<i>What are common Nusances.</i>	Alehouses disorderly kept, Bawdy-houses, Brew-houses, Bridges, Annoyances in them, Cottages unlawful, Eves-droppers, Gaming-houses,	Highways, Annoyances in them, Inmates, Melting-houses for Candles, Rivers, Annoyances in them, Scolds, common, Stages for Mountebanks or Rope-dances.
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All these are publick Nusances, for which an Action on the Case will not lie, but an * Indictment against the Offender, who being convicted, shall be fined and committed till he pay it.

* Indictment, is must conclude ad commune nocumentum omnium ligeorum, &c.

What are private Nusances. Stopping another Man's *Lights*, or building an House so near to another that the Water falls on it when it rains; but this is justifiable by the Custom of *London*, if upon an old Foundation; setting up a Brick-kiln or Hogsty so near the House of another as to offend with the ill Smell, &c.

These and the like are *private Nusances*, for which an Action on the Case will lie, but no Indictment; and both for common and private Nusances the Party grieved may enter on the Ground of the Offender, and with proper Instruments remove them; and if he is indicted,

dicted, either for a 'Trespafs or a Riot, he will only be fined in a small Sum, if convicted.

Where a Man is indicted for a Nufance, the Court never admits him to a *small Fine* till the Nufance is removed, which must be proved by Oath, or by the Certificate of *two Justices*; and the Defendant shall never be allowed to make any Objections against the Indictment till he hath *pleaded to it*.

C H A P. LXVII. Vide XXXVI.

Oath.

2 Infit.
P. 479.

NO Judge, Commissioner or Subject, is compellable to take any Oath, but what is warranted by the Common Law, or directed by Statutes: And therefore you shall find always directing Oaths, and inabling Justices of Peace to administer them, as 31 *Eliz.* 12. 2 *Infit.* 719. and infinite others. 27 *El.* 12.

Lamb.
100.

Any one Justice of Peace may compel such as are between the Age of fifteen Years and Threescore, to be sworn to keep the Peace. See the Statute of *Winchester*, 13 *E. 1.* cap. 6. And the Articles of Inquisition upon the said Statute of *Winchester*, made about *Anno* 34 *El.* 1.

7 Jac. 6.

If any Person of the Age of eighteen Years, and under the Degree of a Baron, shall stand and be presented, indicted or convicted, for not coming to Church, or not receiving the Communion before the Ordinary, or any other having Power to take such Presentment or Indictment; or if the Minister, Petty Constable and Church-wardens, or any Two of them, shall complain to any Justice of Peace, near adjoining to the Place where the Offender dwells, and he shall find Cause of Suspicion. That any Justice of Peace of that County, &c. or to whom Complaint shall be made, shall require him to take the Oath; and if the Party refuse, the Party authorised to give the Oath may commit the Party refusing, to Prison without Bail, until next Sessions or Assizes, where the Oath shall be again tendered him, the Party refusing shall incur a *Præmunire*, except *Femes Covert*, who shall be committed until they take the Oath.

See also the Statutes of 1 *El.* 5 *El.* 1. 3 *Jac.* 4 & 5. What Persons ought to take the Oaths of Supremacy and Obedience, and before whom. *Et hic Tit. Recusants.*

Two such Justices, &c. may take the Oaths of the Under-Sheriffs, and their Officers, &c. See the Title *Sheriffs*.

Swearing prophanely. See more *Chap.* 55.

13 & 14
Car. 2.
cap. 1.

No Person may maintain, That the Taking of an Oath in any Case whatsoever (though before a lawful Magistrate) is unlawful, and contrary to the Word of God; nor may wilfully refuse to take an Oath, by the Laws of the Land being duly tendered, nor may perswade any other to refuse and forbear the Taking the same so tendered; nor go about by Printing, Writing, or otherwise, to maintain, That the Taking of an Oath in any Case whatsoever, is unlawful; upon the Penalties in the said Act, as upon Quakers. For which, see *Quakers*, who by a late Statute are exempted from the Penalties of the said Act 13 & 14 *Car.*

Orchard.

Orchard. See Trespass.

Papists. See Recusants.

Partition of Lands.

WHere the High Sheriff cannot be present, there three Justices shall be with the Under-Sheriff in executing a Writ of Partition. 8 & 9 W. 3. cap. 31.

C H A P. LXVIII. *Vide XXXVII.*

Partridges.

§ 1. *With Nets.* **I**F any Person (shall out of his own Warren, and upon the Freehold ^{11 H. 7. 17.} of another, without the Consent and Licence of the Owner or Possessor) take Pheasants or Partridges by Nets, Snares, or other Engines, he shall forfeit ^{10 l.} A Moiety to the Prosecutor, and the other Moiety to the Owner or Possessor. And the Justices of Peace have Authority to hear and determine it, as well by Inquisition as by Information and Proof.

§ 2. *In the Night.* Every Justice of Peace (by the Statute of 23 Eliz.) may examine ^{23 El. 10.} all Offenders, for the destroying or taking of Partridges or Pheasants ^{P. Pheasants a.} in the Night-time; and for Hawking or Hunting with Spaniels, in ^{P. Just. 38.} any eared or coddled Corn; and may bind by Recognizance the Offenders with good Sureties to appear at the next General Sessions of the Peace to answer their said Offences, &c. Which Justices in Sessions have Power thereby to hear and determine the same: The Forfeiture for a Pheasant is 20 s. and for a Partridge ^{10 s.} And if not paid within ten Days after Conviction, then to have one Month's Imprisonment without Bail. The one Moiety of the Forfeitures to the Lord of the Liberty, the other Moiety to the Prosecutor by Action, &c. But if the Lord of the Liberty shall license, dispense with, or procure such Taking; the whole Forfeiture shall go to the Poor, to be recovered by one Church-warden, &c.

But now by the Statute made 1 Jac. 27. and 7 Jac. 11. the Offences of Destroying, &c. of Partridges and Pheasants (generally) is referred to two Justices of Peace, to examine, hear and determine out of Sessions. *Vide hic infra.*

§ 3. Also after the Conviction of any such Offender (according to the ^{23 Plac. 10.} Statute of 23 Eliz.) for taking and destroying any Partridges or Pheasants ^{P. ibid.} in the Night-time, any one Justice of Peace of that County, may bind such Offenders with good Sureties, that for the Space of two Years, they shall not take or destroy any Partridges or Pheasants contrary to that Statute.

§ 3. **1.** By the Statute made 1 Jac. every Person which shall shoot at, ^{1 Jac. 27.} kill or destroy (with any Gun or Bow) any Partridge, Pheasant, ^{P. Pheasants 6, 7.} House-Dove or Pigeon, Hearn, Mallard, Duck, Teal, Widgeon, ^{21 Jac. 28.} Heathcock, or any House-Dove, or any such Fowl, or any Hare. ^{3 Car. 4.}

2. Or shall take, kill, or destroy any Partridge, Pheasant, House-dove, or Pidgeon, with Setting-Dogs and Nets, or with any Manner of Nets, Snare, Engines, or Instruments.

3. Or shall take out of their Nests, or willingly destroy, or break in the Nest, the Eggs of any Pheasant, Partridge, or Swan.

4. Or shall trace or course a Hare in the Snow.

5. Or shall at any Time take, or destroy any Hare with Hare-pipes, Cords, or any such Instruments, or other Engines.

6. Or shall have or keep any Greyhound for Deer, or Hare: or Setting-Dog or Net, to take Pheasants or Partridges, except they have Land, &c. of Inheritance, of the clear Yearly Value of 10*l.* or 30*l.* *per Annum* for Life or Goods worth 200*l.* Or be the Son of a Knight, or Baron of Parliament, or of some Person of higher Degree, or the Son and Heir Apparent of an Esquire.

1 Jac. 27. The said Offences being proved by the Confession of the Party, or by the Oath of two sufficient Witnesses, before any two Justices of Peace, (of the County where the Offence shall be committed, or the Offenders apprehended) every of the Offenders shall by the said Justices) for every such Offence) be committed to the Common Gaol for three Months without Bail, unless the said Offenders shall forthwith, upon the said Conviction, pay to the Church-wardens for the Use of the Poor there, 20*s.* for every Hare, Fowl, and Egg, so taken or destroyed; and 40*s.* for having such Greyhound, Setting-Dog, or Net.

Or after one Month after his Commitment, become bound by Recognizance with two sufficient Sureties in 20*l.* apiece, with Condition not to offend hereafter, in any the Particulars aforesaid. Which said Recognizance shall be taken by two Justices of Peace of the County where the Offender is imprisoned, and by them shall be returned to their next Quarter-Sessions. *This Clause relates only to killing of Hare, Fowl, or Egg, and not to setting Dog, and Nets.*

*If any shall sell or buy to sell again, any Deer, Hare, Partridge, or Pheasant, except Partridges and Pheasants brought up in Houses, or brought from beyond Seas, he shall forfeit for every Deer 40*s.* for every Hare 10*s.* Partridge 10*s.* Pheasant 20*s.* The one Moiety to the Prosecutor, the other to the Poor.* 1 Jac. 27.

Also it may seem by the general Words of the Statute, that any two Justices of Peace may in like Manner proceed to examine and punish the Offences of selling, or buying to sell again, any Deer, Hare, Partridge, or Pheasant, contrary to this Statute; for the Words of the Statute be, that any two Justices of Peace, or more together, out of any Sessions, may examine, hear and determine all Offences against this Statute made 1 Jac. Regis, and may perform every other Thing requisite for the due Execution thereof.

7 Jac. 11. By the Statute made 7 Jac. Regis, every Person which shall take, 21 Jac. 28. kill, or destroy any Pheasant or Partridge, with Setting-Dogs and Nets, or with any Manner of Nets, Snares, or Engines, (it being proved by the Confession of the Party, or by the Oath of one sufficient Witness before any two Justices of Peace) shall by the said Justices be committed for three Months without Bail; unless the said Offender, shall forthwith pay to the Use of the Poor there 20*s.* for every such Pheasant, or Partridge. And further, to become bound by Recognizance in the Sum of 10*l.* before any one Justice of Peace, never to take, kill or destroy any Pheasant or Partridge any more;

Which Recognizance shall be taken by any one Justice of Peace of the County where the Offence shall be committed, and shall be returned to the next Quarter-Sessions. *But the Preamble of that Clause speaking of Persons of meaner and bad Condition; making a Trade and Living of spoiling and destroying those Games, and not sufficient to pay the Penalty, shall not extend to Persons of sufficiency; and that by a former Clause is qualified to take or kill them. See here §. ult.*

- §. 5. Every Person which shall hawk at, kill, or destroy any Pheasant or Partridge, with any kind of Hawk, or Dog, (by Colour of Hawking) between the first of July, and the last Day of August, (the same being proved by the Confession of the Party, or by the Oath of two sufficient Witnesses, before any two Justices of Peace of the County where the Offence was committed, or the Offender apprehended) shall by the said Justices be committed to the Common Gaol, there to remain for one Month without Bail; unless the said Offender shall forthwith upon the said Conviction, pay to the Use of the Poor there (where the Offence shall be committed, or the Party apprehended) 40s. for every such Hawking at Pheasant or Partridge, and 20s. for every Pheasant or Partridge, which any, and every such Offender by himself, his Hawk or Dog, shall take, kill or destroy contrary to the Intent of this Statute.

* By the
Statute 8
Geo. cap.
19.

The Party may bring an Action of Debt for this pecuniary Punishment.

But no Offender punished by Virtue of this Law, shall be punished by Virtue of any other Law, for the same Offence: Also such Offences must be complained of to the Justice of Peace, within six Months after the Offence.

- §. 6. Any two Justices of Peace may make their Warrant under their Hands, to any Constable, or Head-borough; to enter into and search the Houses, of any Person (other than such as have free Warren, or are Lords of any Manor, or have Freehold of 40l. by the Year, or more, of some Estate of Inheritance; or have 80l. by the Year for Term of Life, or be worth in Goods 400l.) being suspected to have any Setting-Dogs, or any manner of Nets, for the Taking of Pheasants and Partridges: And wheresoever they shall find any such Dog or Nets, the same to take, carry away, detain; kill, destroy, and cut in Pieces, *As Things prohibited and forfeited to such Officer as shall find them.*

Qualifica-
tions.

By the same Statute 7 Jac. c. 11. every such Person as hath Free Warren, or is Lord of a Manor, or hath other Estate of Inheritance to 40l. per Annum, or for Life to 80l. per Annum, or in Goods 400l. is allowed (on their own Free Warren, Manor, or Freehold) to take Pheasants and Partridges in the Day-time only, and between Michaelmas and Christmas.

One Justice may grant a Warrant to search the Houses of Persons suspected to have Partridge or other Game, and if any are found and the Person doth not give a good Account how he came by it, or of whom he bought it, he shall forfeit not under 5s. nor above 20s. to be levied by Distress and Sale, to the Informer and the Poor, and in Default of Distress, to be committed to the House of Correction not exceeding a Month, or less then ten Days, to be whipt and kept to hard Labour. 4 & 5 Will. cap. 23.

Higlers,

Higlers, Chapmen, Carriers, Inn-keepers, Victuallers, or Alehouse-keepers, having in their Possession any Pheasant, Partridge, Hare, &c. or who shall buy or offer to sell the same, shall forfeit 5*l.* to be levied by Warrant, by Distress and Sale, to the Poor and the Informer; and if no Distress, then to be sent to the House of Correction for three Months without Bail for the first Offence, and four Months for the next Offence; Conviction may be upon View or Oath of one Witness within 3 Months. 5 *Annæ c.* 14. made perpetual by 9 *Annæ c.* 25.

The Laws in Force for the Preservation of the Game, are continued and enforced by the Statute 3 *Geo. cap.* 11.

C H A P. LXIX.

Pasture Lands.

^{2 & 3 P.}
^{& M. c. 3.} **H**E that shall keep or feed above 120 Shear-sheep, for the most part of the Year, upon his several Pastures, Lands, Feedings, or Farms, apt for Milch Kine, wherein no other hath Common, shall, so long as he shall keep these 120 Sheep, for every 60 Sheep, keep a Milch Cow; and for every 120 Sheep, rear up one Calf, or forfeit 20*s.* for every Month's not keeping a Cow, and 20*s.* for not rearing a Calf.

^{2 & 3 P.}
^{& M. c. 3.} Every Person that shall upon such his Pastures, keep or feed above the Number of twenty Oxen, Rounts, Schrubbs, Steers, Heifers, or Kine, shall for every ten of the Beasts, keep one Milch Cow, and breed, and wain yearly; and keep for a Year, one Calf for every two Milch Cows, upon the Pains aforesaid, except the Calf shall die, to be recorded within a Year in any the King's Courts, or before the Justices of the Peace who have Authority to hear and determine it, by Bill, Information, Presentment, Action of Debt, or Detinue.

The Act not to extend to Cattle kept to be spent in a Man's House. The said Act is made perpetual by 13 *El.* 25.

^{7 Jac. 8.} The Act of 2 & 3 P. & M. c. 3. shall extend to Lands fit for Kine inclosed since that Act, or hereafter to be inclosed.

C H A P. LXX. *Vide XXXVIII.**Peace.*

^{Lamb. 46.} **E**VERY Justice of Peace hath Authority by the first *Assignamus*, or Clause in the Commission to keep and cause to be kept the King's Peace; by Force of which Words, they have as well the ancient Power touching the Keeping of the Peace, which the Conservators of Peace had by the Common Law; as also all Authority which the Statutes since have added thereto: And so they may cause to be kept all the Statutes and Laws now in Force, which have been made for the Peace, or keeping thereof; and more especially they may arrest, or cause to be arrested and sent to the Gaol, all Murderers, Robbers, and Felons, and all Persons suspected of such Things.

§. 2. They may also suppress, and bind to the Peace, or good Behaviour, all *Affrayors*, and all Persons unlawfully and riotously assembled, or unlawfully wearing Armour, or any Weapons, by Night or by Day, or otherwise putting the People in Fear, and all unlawful *Night-walkers* and the like. All which may be said to be Disturbances or Breaches of the Peace. See more for these under their particular Titles.

§. 3. If any *Affray*, *Forcible Entry*, or other Thing in Disturbance of the Peace, be made or committed in the Presence, or within the View of a Justice of Peace, he hath Power to record it, and to certify the same; and also to commit the Parties to Ward, presently upon the Fact done. But if there be any mean Space, or Time, then he cannot commit them to Ward, but he may record the same, and may (at any Time after) make his Warrant to take them, and bind them with Sureties, to their Good Behaviour, and for want of Sureties may send them to the Gaol. *Cro. 41. per Curiam.*

§. 4. If the Justice of Peace shall certify unto the *King's Bench*, that *I. S.* hath broken the Peace in his Presence, upon this Certificate *I. S.* shall be there fined, without allowing him any *Traverse* thereunto, *Marr. Lett. 3. Cromp. 131.*

What Breach of the Peace is, see more here.

Perjury.

Where an Oath is administered by a Person who hath a lawful Authority, and in a *judicial Proceeding*, and the Witness sweareth falsely, either by himself or by Suborning another in a Thing material to the Cause, this is Perjury.

It must be wilful, deliberate, and what is affirmed must be false to make it Perjury at Common Law, and it must be absolute and direct, and not as the Witness believes or remembers.

It must likewise be in some judicial Proceeding, either in a Court of Law or Equity, or before Persons in the Country having Authority to administer an Oath, or by making an Affidavit where the Fact is either falsely affirmed or denied.

It must be in a Matter material to the Issue, for if 'tis in a Thing immaterial, and not tending to the Cause, 'tis not Perjury.

Subornation of Perjury is likewise an Offence at Common Law, and this is by procuring another to take a false Oath, and if he doth not take it, the Person suborning is punishable by Fine, but the Punishment for Perjury and Subornation is Fine, Imprisonment, and Pillory, and the Offender is for ever afterwards disabled to be a Witness.

Perjury is also punishable by the Statute 5 *Eliz. cap. 9.* by which 'tis enacted, That if any Person shall unlawfully and corruptly procure a Witness to commit wilfull and corrupt Perjury in any Action concerning Lands or Goods in any Court of Record or elsewhere, he shall forfeit 40*l.* and if he hath not Lands to that Value or Goods, he shall be imprisoned for half a Year, and stand in the Pillory one Hour in some Market-Town, and shall not be a Witness till the Judgment is reversed.

This

This Part of the Statute relates only to the Suborner, the other Part extends to the suborned, and to him who of his own Accord is perjured.

¶ If any Person either by Subornation, or by his own Act, shall wilfully and corruptly commit Perjury by a Deposition in any Court of Record, he shall forfeit 20 l. the one Moiety of the Forfeitures to the King, the other to the Party grieved; he shall likewise be imprisoned for six Months, and if he hath not Goods, &c. to the Value of 20 l. he shall be set on the Pillory in some Market-Town, and have both his Ears nailed, &c.

By this Statute a greater Punishment is inflicted on the Suborner than on the Perjurer, but it extends only to Perjury by a Witness, and not to Perjury in an Answer to a Bill in a Court of Equity, or to Perjury in an Affidavit by swearing the Peace, &c.

Neither is a false Oath within this Statute, if it is not prejudicial to some Party in the Cause; nor does this Statute extend to Offenders of this Nature in the Ecclesiastical Courts, if the Matter is Spiritual and not Temporal.

The safest Way to proceed is by Indictment at Common Law, because so much Certainty is not required in that Prosecution, as 'tis upon the Statute.

One Justice may bind the Offender over to the Sessions.

The Defendant having made an Affidavit in C. B. and appearing in Court upon a Summons, confessed that he made it, and that it was false; whereupon the Court recorded his Confession, and ordered that he should be taken into Custody, and stand on the Pillory, &c.

It was objected that his Confession was not a Conviction, but only Evidence of his Guilt, and that he ought to be brought before the Court judicially by Indictment, and convicted thereon; besides the Court of C. B. hath not Jurisdiction in this Case, it being criminal; but *per Curiam*, the Confession of a Crime is the strongest Evidence against the Criminal himself; and the Statute 5 Eliz. gives Power to hear and determine this Offence by Inquisition, &c. or otherwise, by which Word the Confession of the Party may be intended, and the Punishment by Pillory is inflicted by this Statute, which shews that the Court proceeded on the Statute, but 'tis likewise an Offence at Common Law. *Trin. 9. Geo. B. R.*

5 Eliz.
cap. 9.

Dalt. 144.

C H A P. LXXI.

Petitions.

13 Car. 2.
c. 5.

N O Person shall solicit, labour, or procure the getting of Hands, or other Consent of Persons above twenty or more, to any Petition, Complaint, Remonstrance, Declaration, or Address to the King, or both or either Houses of Parliament, for Alteration of Matters established by Law in Church or State, unless the Matters thereof be first consented to, by three or more Justices of the County; or by the major Part of the Grand Jury of that County or Division, at the Assizes or Sessions where the Matter arises; or if in London, by the Mayor, Aldermen, and Commons in Common Council. Nor shall any repair

§. 1.
Petitions
to redress
Grievances.

to his Majesty with any Company exceeding ten, upon Pretence of presenting any Petition, &c. upon Pain to incur a Penalty not exceeding 100l. and three Months Imprisonment without Bail, to be presented at Assize or Sessions, within six Months after the Offence, and proved by two or more credible Witnesses.

But any, not exceeding ten, may present any Grievance to a Member of Parliament after his Election, during the Parliament, or to the King; and both or either Houses of Parliament may address themselves to the King.

Pewterers their Trade, and the advantageous Using it. See 25. H. 8. 19.

CHAP. LXXII. Vide XXXIX.

Plague.

§. 1.
Wandering.

IF any Person infected, or being, or dwelling in an House infected with the Plague, shall be by any Justice of Peace (or other Head Officer of the City, &c.) commanded to keep his House, and notwithstanding shall wilfully go abroad, and converse in Company, having any infectious Sore upon him, it is Felony; and if such Person shall not have such Sore about him, yet for his said Offence he shall be punished as a Vagabond by the Appointment of any Justice of Peace, and further shall be bound to his good Behaviour for one whole Year. 1 Jac. 31.
P. 4. 21.
Jac. 28.

§. 2.
Officers.

It shall be lawful for the Justices (and other Head-officers in Corporate Towns) within their several Limits, to appoint Searchers, Watchmen, Examiners, Keepers, and Buriers, for the Persons and Places infected; and to minister unto them Oaths, for the Performance of their said several Offices, and to give them other Direction as to them shall seem good. See *Crompt.* 122. b.

If any Person infected, or dwelling or being in a House infected; shall contrary to the Command or Appointment of the Justice of Peace (or other Officer) wilfully attempt to go abroad, or to resist such their Keepers or Watchmen, then may such Watchmen with Violence enforce them to keep their Houses, and not be impeached for hurting them. *Ibid.*

§. 3.
Tax.

Any two Justices of Peace (or any two Head-Officers) of any City, Borough, Town Corporate, and Place privileged, may tax all and every Inhabitant, and all Houses of Habitation, Lands, Tenements, and Hereditaments within the said City or Borough, &c. or the Liberties thereof (at such reasonable Taxes as they shall think fit) for the reasonable Relief of such Persons as are infected, or inhabiting in Houses that are infected in the same City, &c. And may levy the said Taxes (by Distress and Sale of the Goods of every Person refusing, or neglecting to pay the said Taxes) by Warrant under the Hands and Seals of two such Justices or Head-officers, to be directed to any Person or Persons, for the Execution thereof: And in Default of such Distress, and that the Refusal be made of Payment, upon Return thereof, the said Justices (or Officers by like Warrant) may commit such P. 1.

such Persons to the Gaol, there to remain without Bail, until he shall satisfy the same Taxation, and the Arrearages.

1 Jac. 31. If the Inhabitants of any such City, &c. are unable to relieve their infected Persons, &c. upon Certificate thereof by the Head-officer, and other Justices of Peace of such City, &c. or by any two of them, to any two Justices of Peace in the County, of or near the said City, &c. so infected, any two of the said County of, or near to the said City may tax the Inhabitants of the County within five Miles of the said Place infected, at such reasonable weekly Rates as they think fit, to be levied by Warrant from any two such Justices of Peace of or near the said City, by Distress and Sale of Goods; and in Default thereof, by Imprisonment of the Body of the Party taxed, as aforesaid. Relief.

It seemeth hereby, that of Necessity there must be some Justice of Peace of the City, to join with the Head-officers of the City to perfect, impose, and raise the Tax in the Act mentioned.

If any such Infection shall be in any Borough or Town Corporate where there are no Justices of Peace, or within a Village or Hamlet, within any County; then any two Justices of Peace of the same County wherein the said Place infected shall be, may tax the Inhabitants of the said County, within five Miles of the said Place infected, at reasonable weekly Rates, as they shall think fit, for the Relief of the said Place infected, to be levied by Distress and Sale of Goods (upon Warrant of the said Justices of Peace of the same County;) and in Default thereof, by Imprisonment as aforesaid.

All such Taxes made by the Justices of the County, for the Relief of such City, &c. shall be disposed by the said Justices of the said County, and as they shall think fit (where there are no Justices of Peace in such City, &c.) And where there are Justices of Peace, then in such Sort as the Head-officer and Justice of Peace there, or any two of them shall think fit.

All such Taxes made either in City, &c. or County, shall by the said Justices that taxed them (as it seemeth) be certified at their next Quarter-Sessions to be holden within such City, &c. or County, respectively, there to be continued, enlarged, extended to other Parts of the County, or determined, as at their Sessions respectively shall be thought fit.

But it seemeth, that if the Justices of Peace in the City, &c. should think fit to continue or enlarge the Tax assessed on the County, they cannot do that without the like Order and Consent of the Justices of the Peace of the County in their Sessions, but ought to certify the Occasions and Necessities of the City, &c. they best knowing it; and herein the Justices of the County are to credit them, unless they have Reason to the contrary.

But no Justice of Peace shall do or execute any Thing before mentioned, within either of the Universities of *Cambridge* or *Oxford*, or within any Cathedral Church, or the Liberties thereof, or within the Colleges of *Eaton* or *Winchester*: But the Vice-Chancellor of the University, Bishop and Dean of such Church, and Provost or Warden of the said Colleges, shall do and execute all Things abovementioned within their several Precincts.

This Act is in Force being continued by 3 Car. 1. 4. & 17 Car. 1. 4.

CHAP. LXXIII. *Vide XL.*

Poor.

§. 1.
What.

POOR are here to be understood not vagabond Beggers and Rogues, but those who labour to live, and such as are old and decrepit, unable to work, poor Widows, and Fatherless Children, and Tenants driven to Poverty; not by Riot, Expence or Carelessness, but by Mischance, &c.

Not working.

Any one of those Justices of Peace, who may appoint Overseers for P. 4. the Poor, may also send to the House of Correction, or Common⁴³ Eliz. Gaol, such as will not employ themselves in Work, being thereunto² appointed by the Overseers, according to this Statute.

§. 2.
Overseers.

The Church-wardens and two (or more) Justices of Peace, whereof⁴³ Eliz. P. 2. one to be of the *Quorum*, dwelling in or near the Parish or Division, &c. shall yearly, within one Month after *Easter*, under their Hands and Seals, appoint in every Parish four, three, or two substantial Householders, as shall be Overseers of the Poor within the same Parish. 21 *Jac. cap. 28.*

The Justices of Peace, which have the Appointing of these Overseers, must therein be careful to chuse such Men as in every Town are fittest, *sc.* Substantial Persons, having Competency of Wealth, Wisdom, and a good Conscience. And they must be Householders, not Sojourners, however otherwise qualified. And indeed, this Name and Office of Overseers, may beseeem the best, and not the meanest Men (it being a Name and Office of great Antiquity and Excellency, as you may see 1 *Chro.* 23. 4. *Acts* 20. 28. and *Acts* 6. 3. 5.). And though the Persons are not dignified according to the Singularity of the Subject; yet this is not the least Office to be called Overseers of the Poor; for as God himself hath a special Respect to the Miseries of the Poor; so they be like God, who provide for the Necessities of the Poor.

§. 3.
Large Parishes.

All poor, needy, impotent and lame Persons, within every Township and Village in the Counties of Lancashire, Cheshire, Derbyshire, Yorkshire, Northumberland, the Bishoprick of Durham, Cumberland, and Westmorland, and other Counties, where by Reason of the Largeness of the Parishes, they cannot reap the Benefit of the Statute of⁴³ Eliz. shall be maintained and set on Work in the respective Township or Village wherein they were inhabiting or settled; and that according to the Rules of 43. Eliz. shall be yearly in every Township and Village chosen two or more Overseers, who shall do and forfeit as in the Act of 43. Eliz. is appointed. 14 *Car. 2. c. 12.*

The Justices of the Peace of the said Counties, shall do and execute such Authority in those Villages and Townships, as is directed by 49. Eliz. 14 *Car. 2. c. 12.*

This Act extendeth not only to the Counties therein named, but also to other Counties where such great and large Parishes are.

§. 4.
The Overseers Duty.

These Overseers and Church-wardens (or the greater Part of them) with the Consent of two or more such Justices, shall take Order from Time to Time for setting their Poor on Work, putting out Apprentices, and relieving their impotent, as followeth.

1. First, For setting to work the Children of all such, whose Parents shall not by the greater Part of the Overseers be thought able to keep and maintain their Children, which Children they, or the greater Part of them, by the Assent of two Justices, may also put out to be Apprentices, *scil.* The Men Children till their Age of 24, and the Women Children till their Age of 21 Years, or the Time of their Marriage.

And all poor Children of the Age of 7 Years, or above, so bound Apprentices, may be taken and kept as Apprentices by their Masters, any former Statute to the contrary notwithstanding. See 1 *Fac.* 25. and 21 *Fac.* 28. and 3 *Car.* 4. but such Binding must be by Indenture. See *Ant. Tit. Labor. Crom.* 184. b. And see the Form of such an Indenture *hic postea.*

Note, that the putting of poor Children Apprentice, is holden to be one of the best Ways of providing for the Poor. Resol. 1.

And one Justice of the Peace may compel any Person meet, to be bound as an Apprentice.

2. For setting to work all such Persons (married or unmarried) as having no Means to maintain them, use no ordinary and daily Trade of Life to get their Living by.

Such also as can get no Work, are by the Overseers to be set on work; and any one Justice of Peace may send to the House of Correction, or common Gaol, such as shall not employ themselves to work, being appointed thereto by the Churchwardens and Overseers of the Poor of the Parish. 43 El. cap. 2.

Now the placing of such Apprentices, and the setting the Poor to work, is the true Duty of Overseers, for otherwise their bare gathering or raising a Stock, is to little Purpose.

And note, that the Churchwardens and Overseers of the Poor, may by and with the Consent of two or more Justices of Peace (whereof one to be of the *Quorum*, &c. "within their respective Limits, where there are more than one, or if but one, then by his Consent" set up, use, and occupy any Trade, Mystery or Occupation, only for the setting on work, and better Relief of the Poor of the Parish, Town or Place where they are Overseers, &c. 3 *Car.* cap. 4.

Also such Poor as are not to be removed out of the Parish, or are lawfully settled, may by the Consent of the Parish, or by the Churchwardens and Overseers of the Poor, or the greater Part of them, be placed as Inmates for a Time. Resol. 34.

43 Eliz. cap. 2.

Or by the Leave of the Lord of any Waste, they are to have Houses bought for them on the Waste, according to the Statute 43 Eliz. cap. 2.

3. For relieving such Poor amongst them as are poor and impotent, or nor able to work.

But this relieving of Poor and impotent Persons must be convenient, and such as that they neither be forced to beg, or steal; nor so little, as that it may be a lingering Death to them.

And to these Purposes, the said Overseers are enabled to raise weekly, or otherwise by Taxation of every Inhabitant, Parson, Vicar, and other; and every Occupier of Lands, Houses, Tithes, Mines or saleable Underwoods (proportioning them to an annual Benefit, &c.) in the same Parish, such competent Sums of Money as they shall think fit, therewith to provide a convenient Stock of some Ware or Stuff, to set the Poor on work, and also competent Sums of Money towards the necessary Relief of their lame, impotent, old, blind, and other

Poor not able to work; and for the putting out of such Children (as aforesaid) to be Apprentices,

Parson.

The Parson Presentative having the Tenth or Tithes of the Parish, it is equal that he should pay the tenth Part of the Rate to the Poor of the Parish; or shall bear to the Taxation of the Poor according to the reasonable Value of his Parsonage; having Consideration to just Deductions, and so of the Vicar Presentative. Resol. 33.

And concerning Parsonages impropriate, the Tithes are to be considered in their several Kinds; for Tithe-Corn is usually paid to the Parson, and small Tithes of all Kind to the Vicar.

But for Pasture-grounds, Parks, Wood-grounds, Commons and Heath-grounds, &c. These in many Parts of this Realm do exceed the Corn, or arable Ground, and may pay little or nothing, either to the Parson or Vicar: So as in Reason it seemeth such Parsonages; Presentative or Impropriate, should be charged only for the Tenth of such Profits as they receive, and not for the Tenth of the whole Parish.

For other Men, how they shall be rated, see Chap. 50, & 53.

*§ 9.
Toll taxed*

Toll of Markets seems also taxable, touching which in Michaelmas Term 27 Car. 2. happened this Case in the Town of Wickham in Bucks, having much Poor, and there being in the Town a considerable Market. The Toll whereof belonging to the Corporation there, was worth 60 l. per annum, which the Overseers had taxed, and the Mayor and Justices refused to sign, and allow the Tax, pretending it was not taxable. The Overseers and Justices, the last Trinity Vacation, attended the Lord Chief Justice Hale for his Opinion, who said, he conceived it taxable within 43 Eliz. Yet the Justices would not sign and allow the Tax: Of which Complaint being made to the King's Bench, a Rule was for the Mayor, &c. to attend, and he attended accordingly; and he observing the Court to be angry, promised to assign and allow the Tax; and the Court ordered him to pay the Overseers the Charges of their Prosecution: And Hale said, For such a Refusal a Quo Warr. would lie. Which Case I have inserted, as well to shew what is taxable, as to inform Justices of Peace of their Duty. This Case happened Michaelmas 27 Car. 2.

Burials.

10. The Overseers are likewise to give an Account of the Burials, since their former Account, on Pain of five Pounds: And their Accounts shall not be allowed till they have accounted for the same. See Burials.

*§ 16.
Overseers
Duty.*

The Office then of these Overseers consisteth principally in two Things.

1. In taxing Contributions of Money for the Relief of the Poor.
2. In disposing thereof according to Law, and good Discretion.

Tax.

And in these Taxations, there must Consideration be had, first to Equality, and then to Estates.

Equality, that Men may be equally rated with their Neighbours, and according to an equal Proportion.

Estates, that Men be rated according to their Estates of Goods known, or according to their known yearly Value of their Lands, Farms, or Occupings; and not by Estimation, Supposition or Report. Also herein the Charge of Family, Retinue, &c. is in some Measure to be regarded: For if one valued at 500 l. in Goods, hath but himself and his Wife, and another estimated at 1000 l. hath Wife and many Children, &c. the first Man by Reason is to be rated as much as the other; and so of Lands. *Tamen quare*, what the Law is in such Cases.

Touching the Taxation of Mens Estates, these Rules are to be observed:

1. If a Man live in the Parish where his Lands lie, and doth demise those Lands to others, the Poores Tax in that Case ought to be charged upon the Tenant, and not on the Land-lord, in Respect of the Tenants Occupation thereof. §. 11. Where to be taxed, and who.

2. A Man having Lands in other Parishes than where he lives, the same being in Lease, or not in Lease, he is to be taxed in the Parish where he lives, according to his visible Estate there, and not for his Lands or Rent in another Parish. And both these Points were resolved by Hutton and Crook, Judges of Assizes, at Lent Assizes at Lincoln, upon Application to them made by Sir Anthony Earby, against the Inhabitants of the Town of Boston; and this they said was agreed upon by all the Judges of England upon a Reference to them.

What shall be said to be a Parish within 43 Eliz. 2.

R. If there be an ancient Parish, and an ancient Village within that Parish; which Village had an ancient Church, and those within that Village have had parochial Rights, are chosen Church-wardens and Overseers of the Poor, and have been separately taxed ever since

43 Eliz. 2. for the Relief of the Poor within that Village. This is a Parish within 43 Eliz. 2. and Taxes may be made and levied within themselves: And all this was resolved in a Cause between Hilton and Paul, M. 3 Car. 1. in the Common Pleas upon a special Verdict there found, between the Parish of Hinkley, in the County of Leicester, and the Village of Stoke-Goldingham within that Parish. Cro. Car. p. 65. And the like was also resolved H. 10. Car. 1. B. R. between Nicholls and Walker, between the Parish of Hatfield, and the Village of Tatrige, Jones Rep. p. 356. and Cro. Car. p. 286.

The Distinction of Parishes in England, I find attributed to Theodorius, Archbishop, who died An. Dom. 690. (almost one Thousand Years since; for thus it is written of him, as it is cited out of a MS. *Excitabat fidelium devotionem & voluntatem in quarumlibet provinciarum Civitatibus, necnon villis, Ecclesias Fabricandi, Paracias distinguendi, assensus regios procurando, ut si qui sufficientes essent, & ad Dei honorem pro voto haberent super proprium fundum Ecclesias construere, earundem perpetuo Patronatu gauderent, &c.* Beda Ecclesiast. Historic. notis Wheel. p. 399. §. 12.

The Causes of these Taxations are three. { Set the Poor at Work by a Stock, &c. { To Relieve the impotent, { Put forth Apprentices, { by Money. §. 13.

And this last, *scil.* their putting forth and taking of Apprentices, may well be termed a special Work, and seminary of Mercy.

But in putting forth of these Apprentices, there must be Regard had to the Master, the Child, and the Parents.

The Master, *scil.* his Ability and Honesty; otherwise by some Deceit, or hard Intreaty, they may provoke their Apprentices to depart, or run away. Apprentices. See Labourers, and there of Apprentices.

Secondly, His Trade or Faculty, lest the Apprentice consume his Time without learning any Thing: For the Word Apprentice cometh of the Word *apprendre*, id est *ad-discere*, or *discere*, and sheweth, that they are to be bound to, and brought up in, taught and instructed by the Master in some Art, Mystery, or Trade.

To these two, the Justices of Peace must have an Eye.

And withal, the Justices at their Monthly Meetings should do well (once in three or four Quarters) to cause the Officers of every Town to bring them a Note in Writing of all the Poor in the Town which are overburthened with Children, and of the Names and Ages of their Children; and also a Note of the Names of all those in their Parish that are fit to take Apprentices; and so from Time to Time to put out and place the Children.

The Child, *scil.* to put them out timely, and while they are young and tractable (so as they be above the Age of seven Years) otherwise by Reason of their idle and base Educations, they will hardly keep their Service, or employ themselves to work.

And by the Statute 7 Jac. cap. 3. Children which be above the Age of fifteen Years, are not thought fit, or allowed to be bound out as Apprentices, but are to be forced to work, or to go to Service; and if they refuse, they are to be sent to the House of Correction, or bound over to their Good Behaviour, and sent to the Assizes or Sessions of the Peace.

So all single Persons under the Age of Thirty, being warned by two Justices of the Peace, to put themselves into Service by a Day prescribed them, if they do not accordingly, but shall continue living idly out of Service, not having visible Means of their own to maintain them, they are to be sent to the House of Correction, or bound over, &c. *ut supra.*

The Parents, *scil.* to take away such as are brought up to live idly and loosely, or else such as are a Burden to their Parents, and whose Parents are least able to relieve them.

Masters. Again concerning the Masters; all Persons of Ability are compellable to take Apprentices according to this Statute; yea, if they be of Ability, though they have but a House, or sleeping Place in the Town, they are chargeable.

And the Statute of 43 Eliz. 2. which saith, that the Church-wardens and Overseers of the Poor, shall put out Children to be Apprentices, doth necessarily imply, that such as are fit, must necessarily receive such Apprentices. Resol. 1.

Yea, every Man who by his Calling, and Profession, or Manner of Living entertaineth, and must have Use of other Servants of the like Quality, must entertain such an Apprentice: Wherein notwithstanding Discretion must be the Guide upon Consideration of Circumstances. Resol. 3.

And every able or wealthy Person that liveth privately, though he hath no Use of a Servant, yet he must contribute, and may be taxed towards the putting forth of Apprentices, as to other Charges for the Provisions of the Poor. Resol. 4.

Clergymen And Clergymen are not herein exempted, but may have Apprentices put to them; and this was the Opinion of all the Judges, upon two several References to them lately made from the King (as I have been credibly informed.) Or at least they are chargeable to contribute to the putting out of Apprentices. See the Words of the Stat. 43 El. c. 2. antea.

§. 14. Note also, That as the Statute enableth the Church-wardens and *Compulsion to take.* Overseers (with the Consent of two Justices of Peace) to put out Apprentices, so it doth enable them to place those Apprentices with the Masters; for without Masters there can be no Apprentice. And the said Justices may * *This is altered. See Apprentices in Tit. Labours.* compel all such as be of Ability, to take such Apprentices (according to their Discretion,) and if any such Master shall

refuse to take such Apprentice so to him appointed, the said Justices may bind such Master over to the next general Gaol-delivery, there to answer such Default. And this was the Direction of Sir Henry Montague Knight, Chief Justice of the *King's Bench* at Cambridge Assizes, *Anno Dom.* 1618. 'Wherewithal agreed Sir Nicholas Hide, and Sir Francis Harvey, Judges of Assize at Cambridge Summer Assizes, *Anno* 1627. And if he refuse to take such Apprentices, or to give Bail to appear at the next general Gaol-Delivery or Quarter-Sessions) he may be sent to the Gaol, there to remain, until he will give such Bond. *Resol.* 6.

Also the Statute of 43 *Eliz.* c. 2. seemeth to warrant as much, as the Words of which Statute to this Purpose, are thus; *Be it further enacted, that it shall be lawful for the Church-wardens and Overseers, or the greater Part of them (by the Assent of two Justices of the Peace) to bind any such Children to be Apprentices, where they shall see Convenient.* Plus hic Antea. *Tit.* Labourers.

Or else the said Church-wardens and Overseers (with the Consent of the said Justices,) may impose upon such Master (refusing to take such Apprentice,) a competent Sum of Money, for the Putting out of such an Apprentice elsewhere. And upon the Master's Refusal, to pay such Money, two such Justices may take their Warrant to levy the same by Distress and Sale of the Offenders Goods, &c. See *Poulton* 2. 4.

Or the Refusers to take Apprentices, may be presented and indicted for the same, upon the Statute of 43 *Eliz.* at the Assizes, or Sessions of the Peace, and upon such Indictment they may be fined and imprisoned. *Resol.* 7.

This Matter although long used, and here so positively asserted, deserves Consideration. For as in Maintenance of this Opinion, several Opinions of Judges of Assize may be urged with the continual Practice of most Justices of Peace, and some of them very learned; ever since 43 *Eliz.* and the Resolution of the Justices, falsely so called, for the Reasons hereafter expressed. So on the other side, it may be truly said, that this Matter was never yet judicially and solemnly resolved; for as I have heard that ancient learned Judge, Justice *Twisden* say, that in the Lord Chief Justice *Roll's* Time, one having removed an Order, whereby he was charged to take an Apprentice into the *King's Bench*, appeared thereupon; and upon several Motions against him there he was often chid, and went away as he said with a scratched Face, but nothing more was done thereupon, and the Reasons of the other side are very weighty against such Imposition. One Reason of the Tax, mentioned in the Statute of 43 *Eliz.* 2. is to raise a Stock (amongst other Things) for putting out of Poor Children to be Apprentices; and the Words that insue in that Act, *That it shall be lawful for the said Church-wardens and Overseers, by the Assent of two Justices of Peace to bind any such Children as aforesaid to be Apprentices, where they shall see convenient, &c.* must needs be understood of doing it with and out of such Stock; and that Clause doth only inable the Officers with such Stock to bind them out, for otherwise there had been no compulsory Power given to the Officers, to oblige the Children to be bound, or the Parents to suffer it: And the Statute of 1 *Jac.* 25. continuing the Statute of 43 *El.* adds this, *That all Persons to whom Overseers shall bind any Children*

*Children Apprentices may take, receive, and keep them as Apprentices; which was doubted soon after the Making of 43 Eliz. which need not have been doubted, if the Statute of 43 Eliz. had intended such Compulsion to take; besides the Putting out Children by Stock, is the most equal Way; for thereby every one pays his equal Proportion: Also the Statute 43 Eliz. mentions not what Age such Children must be of, that are so put out; nor provides any Appeal or Relief for the Party, to whom such Child shall be put Apprentice, being grieved thereby, as it hath done for a Man that is overtaxed. Also the Authority seems to be too great, and the Inconvenience too manifest; for a Man that wants no Servants, shall by this Means be compelled to keep one or more; and a Child perhaps, neither cleanly nor honest, obtruded on a Gentleman for so long a Time, as till their Age of twenty-one or twenty-four. And it is well known, that such Persons, as Overseers usually are, would prove partial to those of their own Condition, and be unequal in such Imposition on Gentlemen. But this Matter being directly under Consideration of the Court of King's Bench, in the Case between King and Pyne. A Case being made and agreed, and the Court having resolved to confer with the Rest of the Justices and Barons thereupon, we may well hope for a speedy Decision of this so long controverted Point. * Which is now done by the Stat. 8 & 9. W. c. 30.*

** If the Master refuse to receive the Apprentice, and to execute one Part of the Indentures, then upon Oath made by one Church-warden or Overseer before two Justices, he forfeits 10l. to be levied by Warrant, by Distress and Sale, to the Use of the Poor, but he may appeal to the next Sessions.*

But there is no Necessity that any Money should be given with Apprentices, for that must be left to the Discretion of the Church-wardens and Overseers, all Circumstances of Age and Ability being considered: And if they cannot agree with the Party, then the Justices of Peace adjoining; or in their Default, the Sessions of Peace are to determine this. Resol. 2.

An Apprentice put to a Man in regard of a Farm, when his Lease expireth, his Apprentice must go still with the Farm, if the first will. Otherwise where the Apprentice is put to a Man in regard of his Ability, or for other Respect.

Master dying. Where the Master of the Apprentice dieth, I have known it ordered by the Judge of Assize, that the Executor having Assets, shall keep the Apprentice, or shall otherwise provide for him: Otherwise Apprentices, as also Servants, are by Law settled in that Parish (where they were last) and if they become impotent, there the Parish must bear the Adventure, after their Time, or Term of Service be lawfully ended. Resol. 25.

If the Parents of Poor Children shall refuse to suffer their Children to be put forth (without good Cause shewed) such Parents also may be bound over by the Justices to answer their said Default: And if the Apprentices shall refuse, the Justices may send them to the House of Correction Quousque, &c.

And if the Parents of such Poor Children being so bound, shall entice their Children away (themselves not being able to maintain them) such Parents may be committed to the House of Correction. Resol. 7.

Note, that if the Master shall put his Apprentice into Apparel, it is a Gift in Law, and he cannot after take it away, though he should part with his Apprentice, &c. Br. Transf. 93.

An Apprentice which runneth from his Master, or shall be otherwise disordered, may be sent to the House of Correction, by any Justice of Peace; or else by Order from the Sessions. See hic. cap. 31.

Two Justices shall take the Account of such Overseers, at the End of their Year, and of the Church-wardens in every of these Particulars following. §. 16. The Overseers Account.

1. Of all Sums of Money by them received, or rated, and not received.

2. Of all such Stock of Ware of Stuff, as they, or any of the Poor have in their Hands.

3. What Apprentices they have put out and bound, according to the Statute.

4. What Power they have set at Work, or relieved.

5. Whether they have suffered any of their Poor to wander and beg out of their Town, or in the High-ways, or in their Town, without their Direction. See for this 39 Eliz. 3 & 4. & Lamb. 106. Resol. 15.

6. Whether they have monthly met to consider of these Things.

Lamb. 4. 18. 7. Whether they have assessed the Inhabitants and Occupiers of Lands, &c. in their Parish, *scil.* All such as are of Ability, and with Indifferency.

Ibid. 8. Whether they have indeavoured to levy and gather such Assessments.

9. Whether they have been otherwise negligent in their Office; within which Words also there seemeth to lie included, *If they have relieved the Impotent*, or shall neglect to execute the Justices Warrants to them, or any of them directed, for the Levying of any Forfeiture, according to this Statute. See P. 2 & 12.

7 Jac. 3. *All Sums given to bind out Apprentices, shall continue and be employed to that Use, and no other, by the Persons following, except the Givers otherwise disposed of it. Viz. By all Corporations of Cities, Boroughs, and Towns Corporate; and in Towns and Parishes not Corporate, by the Parson or Vicar, with the Constable or Constables, Church-warden or Church-wardens, Collectors, and Overseers of the Poor, or the most Part of them; and they shall have the Nomination and placing such Apprentices, and guiding and employment of such Moneys: And if they, or any of them shall wilfully neglect or forbear so to do, they and every of them shall forfeit 3l. 6s. 8d. One half to the Poor, the other to the Prosecutor. By Action, &c.* §. 17. Charity for Apprentices.

7 Jac. 3. *The Master, or Mistress or Dame, receiving such Money with such Apprentice, shall be bound with two Sureties to the Corporation; or the Person having the Ordering thereof, conditioned to repay the Money at the End of seven Years, or three Months after; and if the Apprentice die within one Year after his Death; and if the Master, &c. die within seven Years, then within one Year after his Death, such Money shall be put out again and employed within three Months after it comes in. And if there be no poor Children to be put out, then the poorest Children of the Parish adjoining; and the poorest Children shall always be made choice of, and none to be above 15 Years of Age.*

7 Jac. 3. *The Persons so intrusted, shall once every Year at Easter, or within a Month after, give to four, three, or two Justices dwelling in or next the Town, &c. an Account of all Moneys so employed, of Securi-* §. 18. Account.

ties taken, and what is in their Hands: And at the Time of their Account, or a Month after deliver up to such as shall succeed them the Obligations and Money.

In Case of any Breach of Trust or Misemployment, the Lord Chancellor may grant Commissions, &c. 7 Jac. 3.

Quære, What Authority the Justices have by this Statute, for it seemeth they have no Authority compulsory over the Persons accounting, but only to take their Accounts. And as they find the Money misemployed, or not employed, to represent the same to the Lord Chancellor, &c. that Commissions may issue as that Statute directs.

§. 19.
Refusal to
account
and pay.

* This must
be within
four Days
after the
End of
their Year,
and after
other Over-
seers are
appointed.

Now if the Church-wardens, or either of them, or any of the Overseers, shall refuse to make and yield a true and perfect Account to the said Justices of all such Sums of Money, and of all such Stock, as aforesaid; any two such Justices may commit them to the common Gaol, there to remain without Bail, till they have made a true Account, and satisfied and paid (to the new Overseers) so much of the said Sum and Stock, as upon the said Account shall be remaining in his (or their) Hands, &c. And if they make a false Account, they may be bound over to the Assizes, or Sessions, and there an Indictment may be preferred against them. P. 24. 10.

Also if any of the Church-wardens or Overseers, shall refuse or deny to pay and deliver over to the new Overseers the Arrearages (Sums of Money or Stock) which shall be in their Hands, and due and behind upon their Account to be made as aforesaid; any two such Justices of Peace may make their Warrant to the present or subsequent Church-wardens and Overseers, or any of them, to levy the same by Distress and Sale of the Offenders Goods, rendering to the Parties the Overplus; and in Defect of such Distress, any two such Justices of Peace may commit him or them to the common Gaol, there to remain without Bail, until Payment or Delivery of the said Sum, Arrearages and Stock be made. P. 2. 4.

But if Persons assessed die before the same be collected, without Default of the Overseers, as it happened by Reason of the Sickness in 1638. A new Rate and Assessment is to be made to supply the same. Ord. 27 Aug. 14 Car. Lib. Sell. Pa. Middlesex. Ibid.

If any such Stock shall be in the Hands of any the Poor to work, and such Poor shall refuse to deliver the same, any two such Justices may make the like Warrant to levy the same by Distress, and in Defect thereof may commit such Offenders as aforesaid.

And as for other the Negligences of the Church-wardens and Overseers in their Office, or in the Execution of the Orders aforesaid, every of them making Default, shall forfeit for every such Default 20 s. (but such Default must be proved, either by the Offender's Confession or by Examination of Witnesses) which Forfeitures shall be levied by the Church-wardens and Overseers, or one of them, by Warrant from any two Justices of Peace, by Distress and Sale of the Offender's Goods, &c. or in Defect of such Distress, it shall be lawful for any two Justices of Peace to commit the Offender to the Common Gaol, there to remain without Bail till the said Forfeitures shall be paid; and the same shall be employed to the Use of the Poor of the same Parish. P. 12.

The

The Refusers to pay their Rates or Money assessed upon them; and Overseers having Money or Stock behind upon their Account, their Forfeitures shall be levied by the new Overseers and Church-wardens, or one of them, by Warrant from two Justices of Peace, &c. But for other Negligences, or Forfeitures of the Overseers and Church-wardens, the Justices shall make their Warrant to the Constable to levy the same. Refusing to pay the Rates.

Two Justices of Peace are to allow the Cause of Excuse of such Overseers, as shall meet every Month, to consider of the Premises, or as shall be otherwise negligent in their Office. *Lamb. edit. 1614. pag. 360.*

Two Justices may make their Warrant (as well to the present as subsequent Overseers and Church-wardens, or to any of them) to levy all such Sums of Money, and all Arrearages, (of every one that shall refuse to contribute according as they shall be assessed) by Distress and Sale of the Offender's Goods, (rendering to the Party the Overplus.) And in Defect of such Distress, two Justices may commit him or them to the common Gaol, there to remain without Bail, till Payment be made of the said Sum and Arrearages. §. 21. Levy of Taxes. Refusers to pay their Rates.

P. 3. If the said Justices do perceive that any Parish is not able to relieve their Poor, then any two Justices may tax and assess any other Parsons within the Hundred (where the said Parish is) to pay such Sums of Money to the Overseers of the said poor Parish for the said Purposes, as the said Justices shall think fit, according to the Intent of this Law. §. 22. Parishes not able, then to tax the Hundred.

Or if the Parish be not able to provide for the poor Children of the same Parish, the Justices may provide Masters for them in other Parishes within the same Hundred; and if the Hundred be not able, then in the rest of the Country, as for other Provision for the Poor, which must be at a Quarter-Sessions. Refol. 5.

He that without the Consent of the Parish, shall bring any Poor to any Town, which are burthensome to the Town, may be raised in his Rates towards the Relief of the Poor of the Parish. Sir Nicholas Hide's Opinion. §. 23. Charging Parishes.

Landlords, or Owners, or Parishioners, taking into their Houses poor Persons (out of the Parish) like to burthen the Parish, if the Landlord will not secure the Parish, &c. Then may he be charged towards the Relief of the Poor of that Parish, to the Value of his Rent reserved; or according to the Charge they so bring into the Parish. See Refol. 35.

Note, That Orders of this Nature in the Sessions-Book of Middlesex, are very frequently made in Presence, and by the Justices of the Benches at Westminster. Vide that 23 March, 13 Car. where a poor Person was sent back to the House of Mr. Nichols, to remain there without paying any Rent.

P. 7. If any Persons find themselves grieved with any Tax, or other act done by the Overseers, or by the said Justices of Peace, they are to be relieved at the Quarter-Sessions. §. 24. Appeal.

P. 9. Head Officers of Cities and corporate Towns (being Justices of Peace) have the same Authority within their Limits, as herein is limited to Justices of Peace of the County, &c. And no other Justices of Peace are to intermeddle there. Corporate Towns.

P. 10. If any Parish shall extend into two Counties, or Part thereof do lie in any City or corporate Town where they have Justices, then the Justices §. 25. Parish in two Liberties.

stices of every County, &c. shall intermeddle only within their own Limits: And every of them respectively within their Limits, are to execute this Law concerning the *Nomination of Overseers, binding of Apprentices, giving Warrants to levy Taxations unpaid, taking Account of Overseers, and committing such as refuse to account, to pay their Arrearages*: And yet the said Overseers shall, without dividing themselves, execute their Office in all Places within the said Parish, but shall give up several Accounts, &c.

§. 26. *Parents to relieve their Children.* The Father and Grandfather, and Mother and Grandmother, and the Children and Grandchildren of every poor impotent Person, or other poor Persons not able to work, being of sufficient Ability, shall relieve such poor Persons in such Manner as the Justices of Peace (of that County where such sufficient Persons dwell) at their general Quarter-Sessions shall assess; upon Pain that every one failing therein, *Forfeiture.* forfeit twenty Shillings for every Month; the said Forfeiture to be levied by the Church-wardens and Overseers, or one of them by Warrant from any two such Justices of Peace (the one being of the *Quorum*) within their Limits, by Distress and Sale as aforesaid; and in Defect of Distress, any Two such Justices may commit the Offender to Prison, there to remain without Bail, till the said Forfeiture be paid. And the same Forfeiture shall be employed to the Use of the Poor of the same Parish. Resol. 16, 17. p. 8.

‘ The reputed Grandfather or Grandmother seem not to be within this Statute, for a Bastard is *filius populi*. *Reeve's Case. M. 7 Car. P. 344*

‘ If the Child live in the County of *Middlesex*, and be maintained by the Parish there; and the Grandfather, &c. live in the County of *Suffolk*, the Justices of *Middlesex* can make no order therein; but the Justices of Peace of the County of *Suffolk*, must make order to charge, &c. Bastar. 51. Ibid. 346.

‘ If the Grandmother be a Person of Ability, and then marries, the Person with whom she marries is a Grandfather within this Statute; for by the Marriage, all her Goods are given to the Husband, but with this Difference; if the Grandmother, at the Time of the Marriage, were of Ability, otherwise not. *Draper's Case*, also *Gerard's Case*. But if the Wife having nothing to bring her Husband in Marriage; but after by her Industry her Husband becomes a very rich Man, the Husband shall be charged, by *Whitlock*, but *Crook* to the contrary: But they both agreed, That if an Estate descend to the Wife after Marriage, the Husband shall be charged. Ibid. 355.

‘ And the Father also may be compelled to allow Maintenance to his Son's Wife (the Husband being absented) as was done in the Case of one *John Ball*, by *Ord. 2. Sept. 15. Jac. lib. Sess. pa. Mid.*

Now for the better Furtherance of this so needful and charitable a Service, and for the better Help as well of the Justices of Peace, as of the Overseers, &c. I thought it not amiss to set down here certain Resolutions and Advices of the Judges (as I find them in *Mr. Lambard*) together with certain other Observations to this Purpose.

§. 27. *Resolutions.* If there be but one Church-warden in the Parish, he with the other Overseers is sufficient. Resol. 10.

Parents able. If the Parents be able to work, and may have work, they are to find their Children by their Labour (and not the Parish): But if they be overburthened with Children, it shall be a very good Way to procure some of them to be placed Apprentices, according to the Statute. Resol. 8.

tute. And such Apprentices would be put out to Husbandry and Housewifery.

Young Children, *whose Parents are dead*, are to be set on work, ^{Children, where to be relieved.} relieved or maintained at the Charge of the Town where they were Dwelling at the Time of the *Death of their Parents*, and are not to be sent to their Place of Birth, &c. For if the Parents were *not Rogues*, we may not make the Children Rogues, except they wander abroad and beg. This was the Direction of *Flemming* Chief Justice, in a Case between *Weston* and *Cowledge*, Anno 11 Jac. Regis.

A Woman being delivered of a Bastard-Child in one Parish, after ^{Bastard being a Nurse-child.} goeth into another Parish with her Child, and becometh a Vagrant, and so is sent to the Place of her Birth, her Bastard-Child being under the Age of seven Years; this Bastard-Child must be placed with the Mother so long as it is within the Condition of a Nurse-child, which shall be till seven Years of Age; and then it is fit to be sent to the Place of its Birth to be provided for, the Mother or reputed Father not being able. And the Parish where the Child is born, shall not be forced to contribute to the Charge, as long as the Mother lives, and the Child be under seven Years old. Resol. 23.

Resol. 7. If any (not being Rogues) shall travel with their Children through Parents a Town, and the Father or Mother die, or run away, that Town is ^{dying.} not bound to keep their Children, nor to send them away; but only in Charity, except they become wandring Beggars.

A travelling Woman having a small Child sucking upon her, is apprehended for Felony and sent to the Gaol, and is after arraigned and hanged; this Child is to be sent to the Place of its Birth, if it can be ^{Birth.} known, otherwise it must be sent to the Town where the Mother was apprehended; because that Town ought not to have sent the Child to the Gaol (being no Malefactor) and so was it delivered by Sir Nicholas Hide, at Cambridge Lent Assizes Anno 3 Caroli Regis.

Resol. 10. Such Persons as be of any Parish, and have able Bodies to work, if ^{§. 28. Refusing to work at the Wages taxed.} they refuse to work at such Wages as are taxed, or commonly given in those Parts, are to be sent to the House of Correction, and not to their Place of Birth, or last Dwelling, by the Space of a Year. But if they have any lawful Means to live by, though they be of able Bodies, and refuse to work, they are not to be sent to the House of Correction.

Resol. 15. 39 Eliz. None may be suffered to take Relief at any Man's Door, though Beggings within the same Parish, unless it be by the Order of the Overseers; neither may any be suffered to beg by the Highway, though in their own Parish.

Resol. 9. No Man is to be put out of the Town where he dwelleth; nor to ^{Settlement} be sent to their Place of Birth, or last Habitation, but a Vagrant, ^{Houses to provide.} Rogue; nor to be found by the Town, except the Party be impotent; but ought to set themselves to labour, if they be able, and can get work: If they cannot get work, the Overseers must set them to labour.

One Winde and his Wife lived at Laytas, and used a House and Land which was given the Woman by her Brother, her Brother turned her out of it; and thereupon they went to Kimmalton, and took a House there, and lived in it a Year; and at the Instance of the Parish of K. the Landlord at the Years end turned him out of the House: He complained to the Justices, who ordered the Parish of K. to provide him a House; and for not doing it, were in Contempt. And up-

on Complaint at Hereford Lent Assizes, 7 Car. 1. Whitlocke, Justice of Assizes, discharged the Overseers of their Contempt, and discharged the Order made upon K. by the Justices, as being against Law; for that W. was not a poor or impotent Person within 43 Eliz. 2. And the Justices had no Power by that Law to compel and to provide a House for him, for he might provide one himself. Inter Parochias de Laystas & Kimmalton, Bulstr. part 2. p. 242.

And so of them that have or shall have Houses, when their Leases are expired; and Servants, whose Times of Service are ended though they cannot get Houses; for they must provide themselves Houses anew, if they be not impotent. *Ibid.*

But such Persons must not be put out of the Towns where they so last dwelt or served: Neither are they to be sent from thence to their Place of Birth or last Habitation, but are to be settled there to work, being able of Body, or being impotent, are to be there relieved; and yet if such Persons shall wander abroad begging, out of that Parish, then they may be sent as Vagabonds (from the Place where they shall be taken wandering or begging) to their Place of Birth, &c.

But for the Placing and Settling of these poor People (who now for Want of Charity are much sent and tossed up and down from Town to Town, and from Country to Country) it hath been holden by some, that it is in the Power of the next Justice of Peace to give Order therein, and that upon Appeal from him, the Justices of Peace at the Quarter-Sessions may fully take Order therein, and that their Order made in Sessions will not easily be avoided.

The Practice is now quite contrary.

But Sir Francis Harvey at Summer Assize at Cambridge, An. 1629. did deliver it, That the Justices of Peace (especially out of their Sessions) were not to meddle, either with the removing, or settling of any Poor, but only of Rogues.

* But it must be of the yearly Rent of 10l.

If a Man hireth an House in A. and being there with his Wife and Children, he afterwards shall bind himself as a Servant with one Dwelling in B. yet are not his Wife and Children to be sent to B. or placed there, but are to remain still at A. where they were once settled. Otherwise, if the Husband hath * hired an House in B.

A Man with his Wife and Children takes an House in one Parish for a Year, and before the End of the Term is put out of Possession, and then goeth into another Parish; where the Woman, in a Barn, &c. is delivered of a Child: This thrusting out of Possession was an illegal unsettling (which the Law forbiddeth, for that none must be forced to turn Vagrant) and therefore such an one must be returned to the Town and Parish where he or she was last lawfully settled, and the Child also born in the Time of this Disturbance must be sent with them. Resol. 24.

Bastards.

A Woman unmarried being an hired Servant in A. is there gotten with Child, and after her Time of Service expired, she goeth into another Parish, and is there hired in Service, or is there otherwise settled by the Space of one Month, and is then discovered to be with Child, she is not to be sent to the Place or Parish where she was begotten with Child; but to the Place where she was last lawfully settled. Resol. 12.

A Woman Servant unmarried is gotten with Child, and then goeth out of her Master's Service, before or after it is discovered that she be with Child, and the reputed Father be run away, or is not able to free

the Parish; here if the Master hath legally discharged his House of such a Servant, he is no more bound to provide for her than any other. Resol. 13.

But if she be not lawfully discharged out of her Master's Service, nor her Time of Service with him expired, her Master may be forced to keep her still, or otherwise provide for her, till her Time of Service be expired, or that he be legally discharged of such a Servant.

If a Woman being with Child procureth her self to be retained with a Master who knoweth nothing thereof: This is a good Cause to discharge her of her Service. Resol. 21.

And if a Woman-servant be gotten with Child during her Service, this is a good Cause to discharge her. Ibid.

But in the three former Cases, the Master must not turn away such Servant of his own Authority. Resol. 22.

And in these last three Cases, the Charge, as a Misfortune, falleth upon the Parish, which they must bear as in other Cases of casual Impotency. See Resol. 22.

A Maid-servant gotten with Child at A. by her Fellow-servant (or by another young Man of the same Town) after both their Times of Service are expired and they marry, and then the young Man is retained at B. then the Woman is delivered of the Child, she with her Child are to be sent to the Father at B. and there they are to be settled.

Now what shall be accounted a lawful Settling.

Note, That every one who is settled a Native, an Householder, Sojourner, an Apprentice, or a Servant retained for one Month, at the least, without a just Complaint made to remove him or her, shall be held to be settled. Resol. 26.

Yet an Abode by the Space of a Month, must not be to live or keep privately, sometimes in one House, sometimes in another; or to be an Abode by Reason of Sickness, or the like, as Lameness, Lunacy, &c. Nor to a Nurse-child, or a Scholar at the Grammar School, nor at the University; or Persons sent to an Hospital, House of Correction, or to the common Gaol; but their Settling is where their Parents are settled. Resol. 32. or themselves last lawfully settled.

As for Children born in common Gaols and Houses of Correction, their Parents being Prisoners, are to be maintained at the Charge of the County. Resol. 32.

But Note, If one be lawfully retained in Service, or hath but hired an House, or be otherwise lawfully settled, the Law unsettleth none so settled; nor permitteth it to be done by Practice or Compulsion; and such as shall use any indirect Means to hinder a poor Man from hiring an House, may for such Disturbance be indicted upon the Statute, for causing them to turn Rogues.

Note, (by an old Law) a Stranger, or he which cometh Guest-wise to an House, and there lieth the third Night is called an Hogenhine (or Agenhine) and after the third Night he is accounted one of his Family, in whose House he so lieth, and if he offend the King's Peace, his Host must be answerable for him. *Terms de Ley*.

Secundum antiquam consuetudinem dici poterit de familia alicujus qui hospitatus fuerit cum alio per tres noctes, qui prima nocte dici poterit Uncouth, secundo Guest, tertia nocte Hogenhine. *Bract. fol. 124. b.*

And

And Minsh. verb. Hogenhyne, and Uncouth saith, that Uncouth signifieth incognitus, and is used in antient Saxon Laws for him that cometh to an Inn Guestwise, and lieth there two Nights at the most; and that by the Laws of Edward, and of the Conqueror, Hospes trium noctium, if he did any Harm, his Host was answerable for the Harm, as for one of his own Family; and that if he tarried any longer, then he was called Hogenhyne or Agenhyne, that is, Familiaris. So it seemeth in those Times, that to lodge in a Place for three or four Nights together, was counted a Settling.

Such as shall remove or put any out of their Parish, that be not to be put out; this is against the Statute concerning the Relief of the Poor, and fineable. And if any have been so sent, they may be sent back again. Rcfol. 11.

Now this Fine seemeth to be by Force of the Statute 39 El. c. 4, P. Vaug. 5. 11. and to amount to five Pounds, and is to be levied by Distress and Sale of the Offender's Goods, upon a Warrant under the Hands and Seals of any two Justices of the Peace, either upon the Confession of the Offenders, or else upon the Testimony of two sufficient Witnesses.

§ 31. Removal. Upon Complaint made to any Justice of Peace by the Church-wardens or Overseers, within forty Days, of any Person, likely to be chargeable coming to settle in a Tenement under 10l. per Annum. Two Justices Quorum unus of that Division where he comes to inhabit, may by Warrant remove and convey him to the Parish where he was last legally settled, as a native Householder, Sojourner, Apprentice, or Servant, for forty Days, at the least, unless he give Security for the Discharge of the Parish, to be allowed by the said Justices. 14 Car. 2. cap. 12.

Appeal. The Persons thinking themselves grieved, may appeal to the next Sessions, who shall do them right. *Ibid.*

Harvest. Any Person may, for Harvest-work or other Work, travel out of one County into another, so as they carry with them a Testimonial under the Minister's Hand, and the Hand of one Church-warden and one Overseer, that he hath a Dwelling-house there, and hath left a Family there, or otherwise as the Condition of the Person shall require; and if he shall not return when his Work is finished, or shall become impotent: This shall not be accounted a Settlement, but two Justices of Peace may convey him back under the Penalties in that Act. *Ibid.*

Not going. If such Person shall refuse to go, or shall not remain in the Place where he ought to be settled, but shall of his own Accord come back to the Place from which he was removed. Two Justices of Peace may send him to the House of Correction, to be punished as a Vagabond, or to a Workhouse, in that Act mentioned to be set on Work. *Ibid.*

If any Church-warden or Overseers refuse to receive such Person so to be removed, and provide for him as an Inhabitant; any Justice of Peace may bind them to the Assizes or Sessions, to be indicted for their Contempt. This Act to continue to the End of the first Session of the next Parliament. *Ibid.*

§ 32. This Act being but temporary, but of general and publick concern, if any future Parliament shall think fit to continue it, it were good these following Matters were also provided for, and so the Queries here made, thereby removed.

* This Act is continued by several Statutes, and by the Statute 12 Ann. cap. 18. 'tis made perpetual.

1. A Maid-servant or Man-servant being single, and at Service in one Parish by the Year, do contract for a Year with a Master in another Parish,

Parish, and are there settled; whether upon Complaint they may be removed by this Act. This hath been made a Doubt, but yet, it seemeth, such Servant is not within the Meaning of the Act: First, For that the Act instanteth in a Person's coming to settle in a Tenement under 10l. per Ann. and so aimeth at Persons keeping House, and having a Family. Secondly, For that it is not likely such Persons can give the Security intended by the Act; so likewise of Apprentices.

2. A Man dwelling in A. and having a Family, * purchaseth bona fide Lands in B. under 10l. per Annum, and cometh to live in it with his Family: Whether he be removeable by this Act. And it seemeth he is not: For that such a one cannot well be adjudged likely to be chargeable; nor can it be thought the Mind of the Parliament to prevent such Settlements.

* The Consideration-Money must be 30l. otherwise he shall have no Settlement for

any longer Time than he dwelleth there, but shall be liable to be removed to the Parish where last legally settled. 9 Geo. cap. 7.

3. As there is a Time limited for Complaint, and no Time limited for the Removal. Quære, within what Time that must be procured. But it seems reasonable it should be before the next Sessions after the Complaint; otherwise a Parish having complained, may let the Person continue with them, and take his Labour, and keep him under Apprehensions of Removal, which would discourage Industry.

Which Cases and Queries are obvious, as many more are; but I put them not, because I cannot resolve them; and it is well worthy Consideration of wise Law-makers to consider, whether notwithstanding the specious Allegations in the said Act's Preamble, it be not prejudicial to the Commonwealth. For that, 1. By the Words likely to be chargeable, too great a Scope is given to any Person, although never so just and prudent, to inspect and to determine another Man's Livelihood and Condition. 2. A Man without his Offence, is debarred of his natural Liberty, upon a Possibility remote enough, he made a Beggar and a Prisoner, at the same Time deprived of the Company of Friends and Relations, Choice of Air and Place of Trade. 3. It tends to Discouragement of Ingenuity and Industry; for why should any one learn or endeavour to be excellent in any Handicraft, which he is likely to make small use, and smaller Benefit of? 4. Places and Persons are deprived of the Labour and Industry of others. 5. It tends to Depopulation, which is the greatest Inconvenience an Island can undergo.

* This is now remedied by the Certificate

As to the Authority of these Resolutions, it is not great; for some Country Gentlemen coming to Sir Robert Heath, when Chief Justice in the Circuits, put to him these several Queries, to which he subscribed his own Opinion, then brought the same into Serjeants-Inn-Hall, and proposed the same to the rest of the Judges; but they differing in Opinion from him in many Things, they never came to a Resolution, and so were no more than his private Opinion; which some Clerk getting, hath published the same, as Justice Twisden declared in the Court of King's Bench in Easter-Term, 18 Car. 2. as I heard and observed: And afterwards in Michaelmas-Term, 28 Car. 1. a Gentleman of the Bar using these Resolutions to the third, fourth, and eighth Questions touching putting out Apprentices, as an Authority to his Purpose, Justice Twisden said, Why do you use that as an Authority, which all the Judges disclaimed?

Resolutions

Resolutions of the Judges of Assizes. 1633.

- * By Stat. c. 8 & 9 W. 3. cap. 30. he must take the Child or pay 10l.*
1. *Quest.* **W**Hether the Church-wardens and Overseers of the Poor of the Parish, with Assent of two Justices of the Peace; one being of the *Quorum*, may by the Statute of 43 *Eliz. c. 2.* or any Law, inforce a Parishioner of the same Parish to * take a Child of a poor Parishioner of the same Parish, who is not able to keep his said Child, to be an Apprentice?
- Of inforcing Persons able to take Apprentices.*
- Resol.* The Statute of 43 *Eliz.* which saith, That the Church-wardens and Overseers of the Parish shall put out Children to be Apprentices, necessarily implieth, That such as are fit must receive Apprentices, and the putting out of poor Children to be Apprentices, is one of the best Ways for the providing for the Poor.
- Of giving Money with Apprentices.*
2. *Qu.* If they may, then whether they must not give Money with him, and who shall determine what Money shall be given with him, if the Party that is to take such an Apprentice, and the Church-wardens and Overseers cannot agree thereupon?
- Resol.* There is no Necessity that Money must be given, but that must be left to the Discretion of the Church-wardens and Overseers, all Circumstances of Age and Ability being considered; and if they cannot agree with the Party, then the Justices of Peace near adjoining, or in their Default, the Sessions of Peace are to determine these Controversies.
- What Persons are bound to entertain Apprentices.*
3. *Qu.* Whether a Knight, Gentleman, Clergy-man, or Yeoman, or one that is a Sojourner, using Husbandry, Clothing or Graising, or the like; may be inforced to take such an Apprentice?
- Resol.* Every Man who is by Calling or Profession, or Manner of Living, that entertaineth, and must have the Use of other Servants of the like Quality, * must entertain such Apprentices, wherein Discretion must be had upon due Consideration of Circumstances.
- * Or forfeit 10l.*
4. *Qu.* Whether a wealthy Man keeping few or no Servants, nor wanting a Servant, but living privately, may be forced to take such an Apprentice; if not, then whether he may be taxed towards the putting forth of such an Apprentice?
- Resol.* For the receiving of such Apprentices, the Answer may be referred to the Question next before; but out of Doubt every such Person must contribute to the Charge, as to other Charges for the Provision for the Poor.
- Apprentices when to be put unto other Parishes.*
5. *Qu.* Whether they may inforce a Parishioner that is of one Parish, to take such a Child Apprentice, that is of another Parish, but within the same County or Division, if the proper Parish be not able to provide for the Children of the same Parish?
- Resol.* The Justices may provide Masters for them in other Parishes within the same Hundred; if the same Hundred be not able, then out of that Hundred, in the rest of that County; as for other Provision for the Poor, which must be at a Quarter-Sessions.
- Persons refusing to take such Apprentices, or forfeit 10l.*
6. *Qu.* If such a Parishioner may be inforced to take such an Apprentice, and shall refuse not only to take such an Apprentice, but also refuse to be bound to appear at the next Quarter-Sessions or Assizes what shall be done to him?
- Resol.* If any refuse, let such a one be bound over to the next Sessions or Assizes; if he refuse to give Bond, let him be sent to the Gaol, there to remain until he shall give such Bond.

7. *Qu.* If such a Parishioner who refuseth to take such Apprentice, ^{But by Stat. 8 & 9 Will. 3. cap. 30. the Person refusing upon Oath sworn by one Church-warden or Overseer, before two Justices, forfeits 5l. to be levied by Distress, &c. to the Use of the Poor.} shall be bound over to the Sessions for not taking such an Apprentice; and when he appeareth there, shall likewise refuse, what shall be done to him; and what shall be done to the Parents who refuse to suffer their Children to be put out to be Apprentices, themselves not being able to maintain them?

Resol. If at the Sessions or Assizes such a one refuseth to take an Apprentice, and his Excuse be not allowed, it is fit he be bound to the Good Behaviour; and it will be a good Course to indict such a Refuser for a Contempt, and thereupon to fine and imprison him; if he refuse to be bound to the Good Behaviour, let him be imprisoned till he will; and the King's Book of Orders directs, that such be bound with good Sureties to appear at the Council-board: And if the Parents of such poor Children refuse to suffer their Children to be bound Apprentices, or being bound, intice them away, themselves not being able to maintain them, let them be committed to the House of Correction. ^{Refusers to take Apprentices at the Quarter-Sessions to be bound to the Good Behaviour. This is altered by the said Stat. 8 & 9 W. 3.}

8. *Qu.* Whether it be in the Power of any General Quarter-Sessions to mitigate any Penalty upon a Statute-Law; if the Party indicted shall submit himself to the Fine of the Court, and waive the Traverse? ^{Fines cannot be mitigated.}

Resol. If the Party be convicted, or confess the Fault, it is not in the Power of the Court to mitigate the Fine, in such Cases where the Statute makes it certain: But if the Party indicted protesting his Innocency, yet *quia noluit placitare cum domino rege* puts himself upon the Grace of the Court, they may impose a moderate Fine, and order to forbear the Prosecution.

9. *Qu.* If any be bound to appear at the Sessions, and shall tender Submission to the Court, whether the Sessions may stay the Indictment, and mitigate the Fine aforesaid upon the Confession of the Fact?

Resol. This is answered before to the next precedent Article.

10. *Qu.* If any Man be convicted for being drunk, tipling, and keeping an unlicensed Alehouse, or being licensed, is convicted for suffering others to remain Tipling in his House; or for swearing or driving Cattle upon a Sunday contrary to the Statute; whether the Justice of Peace, before whom he was convicted, or any other Justice of the Peace may discharge him of all, or Part of the Forfeiture or Punishment appointed by the Statute? ^{No Discharge of any Forfeiture after Conviction for Drunkenness, Tipling, &c.}

Resol. The Justices have no such Power of Mitigation after Conviction, where the Statute appoints the Measure of the Punishment.

11. *Qu.* Whether a Constable may upon a Warrant for carrying one to the House of Correction for keeping an unlicensed Alehouse, upon the second Conviction break open the House, wherein the Party convicted is, to apprehend him? ^{Constable break open the House.}

Resol. This Question is to be advised upon, it is put in general Terms, and referred to be considered in the Particular where it appeareth.

12. *Qu.* If a Woman unmarried be hired from Week to Week, or from Half-year to Half-year, in one Parish; and there be gotten with Child, and then goeth from thence unto another Parish, where she is settled in Service by the Space of two or three Months, and then discover'd that she is with Child. The Question is, Whether

the shall be settled in the Parish where she was begotten with Child, or in the Parish where she was settled?

Resol. The Place where such a Woman was lawfully settled, is the Direction in this Case, not where she was begotten with Child.

*A Woman
gettin with
Child, the
Master to
provide for
her till her
Delivery.*

13. *Qu.* If a Woman-servant unmarried, be begotten with Child, and then goeth out of her Master's Service, before or after it is discovered that she is with Child, and the reputed Father be run away, or is not able to free the Parish: Whether the Master may be enforced to provide for her till she be delivered, and for a Month after?

Resol. If the Master hath legally discharged his House of such a Servant, he is no more bound to provide for her than for any other.

*Tenants in
Ancient
Demesne.*

14. *Qu.* In Case a Parish consist Part of *Ancient Demesne*, and Part of guildable, an Assess is made for the Relief of the maimed Soldiers, the Gaol, &c. according to the Statute of 24 *El.* cap. 2. Whether the Tenants in *Ancient Demesne* shall contribute with the Guildable for the Payment of the Assize?

Resol. The Statute doth not distinguish between the *Ancient Demesne* and the Guildable in these Cases, *Ubi Lex non distinguit, ibi nec nos distinguimus.*

*Indictment
of Forcible
Entry re-
moved by
Certio-
rari.*

15. *Qu.* Whether an Indictment of Forcible Detainer be within the Statute of 1 *Jac.* c. 5. and not to be removed by *Certiorari*, unless the Party indicted first find Sureties according to the Statute; and whether the Party indicted be to be bound in his Absence to prosecute according to that Statute; and whether an Indictment of Forcible Entry, &c. found at a private Sessions, be to be removed by *Certiorari* without Sureties, according to that Statute?

Resol. This is fittest to be left unto the Court of *King's Bench*, to whose Commission and Jurisdiction this is most proper.

*Driving
Cattle on
the Sab-
bath.*

16. *Qu.* If one be convicted upon the Statute of 3 *Car.* cap. 13. for driving of Cattle on the Sunday throughout several Parishes; whether he shall forfeit 20 s. to every of the said Parishes, or only to one; if to one, then to which of them?

Resol. This Statute giveth the Forfeiture but of one 20 s. for one Sabbath-day, although the Driving of that Day be through divers Parishes. Therefore where the Action is first attached, and the Distress first taken, that Parish shall have the Benefit of the Forfeiture, and not the other.

*Persons a-
ble not par-
ting them-
selves to
Service af-
ter warn-
ing.*

17. *Qu.* If one who is under the Age of thirty Years, and brought up in Husbandry, or a Maid-servant, or brought up in any of the Arts and Trades mentioned in the Statute of 5 *Eliz.* cap. 4. and not inabled according to that Statute, to live at his or her own Hand, shall be warned by two Justices of the Peace to put him or her self in Service, by a Day prescribed by them, and shall not do the same accordingly, but shall after continue living at his or her own Hand; what Course shall be taken with such a Person, and how punished?

Resol. Such Persons being out of Service, and not having visible Means of their own, to maintain themselves without their Labour, and refusing to serve as an hired Servant by the Year, may be bound over to the next Sessions or Assizes, and to be of the Good Behaviour in the mean Time, or may be sent to the House of Correction.

*Taxes for
the Poor,
now to be
made ac-
cording to
the Stat.*

18. *Qu.* Whether the Tax for the Relief of the Poor upon the Statute of 43 *El.* shall be made by Ability, or Occupation of Lands, or both; and whether the visible Ability in the Parish where he lives,

lives, or general Ability wheresoever; and whether his Rent received within the Parish where he lives shall be accounted visible Ability, and whether he shall be taxed for them only, and for any Rent received from other Parishioners; and what shall be said visible Ability.

Resol. The Land within each Parish is to be taxed to the Charges in the first Place equally and indifferently, but there may be an Addition for the personal visible Ability of the Parishioners within that Parish, according to good Discretion, wherein if there be any Mistaking, the Sessions, &c. or the Justices must judge between them.

19. *Qu.* Whether Shops, Salt-pits, Sheds, Profits of a Market, &c. be taxable to the Poor as well as Lands, Cole-mines, and expressed in the Statute 43 *Eliz.* *Things taxable to the Poor.*

Resol. All Things which are real, and a yearly Revenue, must be taxed to the Poor.

14 *El. 2.* 20. *Qu.* Whether the Tax for the County-stock, Gaol, and House of Correction, is to be made by the Statute of 14 *Eliz.* 5. 43 *Eliz.* 2. by Ability, and upon the Inhabitants of the Parish only, or upon them, or the Occupiers of Lands, dwelling in that Parish, or whether such as occupy Lands in that Parish, and dwell in another Parish shall be taxed? *Tax for the County-stock, Gaol, House of Correction, how to be made.*

Resol. If the Statute in particular Cases give no special Direction, it is good Discretion to go according to the Rate of Taxation for the Poor: But when the Statutes themselves give Direction, follow that.

21. *Qu.* Whether any Taxes ought to be made for the Charges that Petty-Constables and Borsholders are at, in conveying Rogues from Parish to Parish, and relieving of them, and how to be rated? *Tax for the Charges of Petty-Constables.*

Resol. It is fit to relieve the Constable and Tithingmen, in such Sort as hath been used in the several Places where they live.

22. *Qu.* Whether a Justice of Peace may discharge a Servant, being with Child, from her Service, allowing that as a reasonable Cause that she is thereby made unable to do the Service, which otherwise she might have done; and if he may discharge her, whether that Parish shall provide for her, till her Delivery, if she cannot provide for herself; and so also, if her Time be expired before her Delivery, who shall provide for her after her Time ended?

Resol. If a Woman being with Child, procure her self to be retained with a Master who knoweth nothing thereof, this is a good Cause to discharge her from her Service. And if she be gotten with Child, during her Service, it is all one: But the Master in neither Case must turn away such a Servant of his own Authority. But if her Term be ended, or she lawfully discharged; the Master is not bound to provide for her, but it is a Misfortune laid upon the Parish, which they must bear, as in other Cases of casual Impotency. *A Woman Servant with Child, how to be discharged.*

23. *Qu.* Whether one being delivered of a Bastard-child in one Parish, and goeth into another with her Child, and becomes Vagrant, and so is sent to the Place of her Birth. Her Bastard-child being under the Age of seven Years, shall be settled with the Mother, and there maintained; if the Mother be not able, nor the reputed Father known, found; or whether it shall be sent to the Place of its Birth, or being settled with the Mother, whether the

Bastard-children, how to be disposed.

Parish where it was born, shall be ordered by the two next Justices, to pay a weekly Sum towards the Maintenance of it?

Resol. The Bastard-child must be placed with the Mother, so long as it is within the Quality or Condition of a *Nurse-child*, which shall be, till seven Years of Age; and then it is fit to be sent to the Place of its Birth to be provided for, the Mother or reputed Father not being able. And the Parish where the Child is born shall not be forced to contribute to the Charge, as long as the Mother lives, and the Child be under seven Years old.

Illegal Un-settlement not to be allowed.

24. *Qu.* A Man with his Wife and Children, takes an House in one Parish for a Year, and before the End of his Term is unlawfully put out of Possession, and after takes Part of an House as an Inmate in another Parish, from whence he is also put out, and then not being able to get any Dwelling, they come to lie in a Barn in a third Parish, where the Husband falleth sick, and the Wife is delivered of another Child, where ought these to be settled?

Resol. If a Man or Woman having House or Habitation in one Parish, be thrust out; this is an illegal Unsetling, which the Law forbiddeth, and none must be enforced to turn Vagrant, and such one must be returned to the Place where he or she was last lawfully settled, and the Child also born in the Time of his Distraction.

Apprentice put out into another Parish, where the Master dies.

25. *Qu.* Whether an Apprentice put out by the Church-wardens, &c. according to the Statute, to a Master in another Parish, if his Master die and leave no Executor or Administrator fit to keep an Apprentice, or able to place him; he shall be provided for in the Parish where he was Apprentice, or shall be sent back to the Parish from whence he was put out?

Resol. Servants and Apprentices are by Law settled in that Parish, and if they become impotent there, the Parish must abide the Adventure, after their Term or Time of Service be lawfully ended.

What is accounted a lawful Settlement

26. *Qu.* What is accounted a lawful Settling in a Parish, and what not?

Resol. This is too general a Question, to receive a perfect Answer to every particular Case which may happen: But generally this is to be observed, that the Law unsettleth none who are lawfully settled, nor permits it to be done by a Practice or Compulsion; and every one who is settled as a native Householder, Sojourner, an Apprentice or Servant for a Month at the least, without a just Complaint made to remove him or her, shall be held to be settled.

** This must be accounted from the Publication of Notice in Writing, 3 & 4 Will. cap. 11.*

A Rogue misconfessing the Place of his Birth or Habitation.

27. *Qu.* A Rogue is taken at C. and will not confess the Place of his Birth; neither doth it appear otherwise, but that he confesseth the last Place of his Habitation to be at S. Hereupon he is whipped, and sent to S. at his Coming to S. the Place of his Birth is there known to be at W. and thereupon the Rogue confesseth it to be so, whether he might without any new Vagrancy be sent to W.?

Resol. In this Case it is fit to send such a Rogue to the Place of his Birth, for this is but a mistaken, and no legal Settling.

In what the Gaol may be delivered at the Sessions.

28. *Qu.* If an Indictment be preferred to the Grand Jury of the Quarter-Sessions of the Peace against one for Murther, Man-slaught, for Robbery, Felony, or Petty-larceny, and *Ignoramus* found thereupon, whether the said Sessions may deliver the Party by Proclamation, or not?

Resol. Not by Proclamation at all, but for Petty-larcenies, and other petty Felonies, in Discretion the Gaol may be delivered of them.

Qu. 29. If a Constable be chosen and refuseth to take his Oath, ^{Constable} what shall be done, and whether a Constable may make a Deputy, ^{elect refusing,} and by what Means?

Resol. The Refusal or Neglect to take an Oath in such a Case, is a ^{Deputy} Contempt worthy of Punishment, and thereupon to fine and imprison ^{Constable} him; and the making of a Deputy is rather by Toleration, than by Law.

Qu. 30. If a Constable die, or remove out of the Parish where, ^{Constable} *Gr.* how is his Place to be supplied? ^{dying, how to be supplied.}

Resol. By the Lord of the Leet, if that Time fall near, otherwise by the Sessions; but if that be too far off, then by the next Justices.

Qu. 31. If a poor weak Man be chosen Constable or Tithingman, ^{Constable} and be unfit for the Place; how may he be removed, and a fit Man ^{unfit, how to be removed.} sworn in his Room?

Resol. The Justices of Peace must help this, and if the Lord of the Leet have Power to cause a Constable or Tithingman, and perform it so ill, it is a just Cause to seize his Liberty.

Qu. 32. If a Nurse-child, a Scholar at a Grammar-School, or in ^{Nurse-} the University prove to be impotent by Sickness, Lametieffs, Lunacy, ^{Child,} or Discovery of Ideocy, *Gr.* How such Persons shall be disposed? ^{Scholar,}

Resol. A Nurse-child, or a Scholar at the Grammar-School, or at ^{Bastard in} the University, or Persons sent to the Common Gaol, Hospital, or ^{a Gaol,} House of Correction, are not to be esteemed as Persons to be settled ^{Houses of} there, more than Travellers in their Inns; but their Settling is where ^{Correction.} their Parents are settled; and Children born in Common Gaols, and Houses of Correction, their Parents being Prisoners, are to be maintained at the Charge of the County.

Qu. 33. What Proportion shall Parsonages, or Tithes bear to the ^{Parson,} Taxation of the Poor of the Parish? ^{Vicar, how}

Resol. The Parson or Vicar Presentative, shall bear according to ^{chargeable} the reasonable Value of his Parsonage, having Consideration to the ^{to the Poor} just Deductions. ^{upon the St.}

Qu. 34. Whether for placing the Poor of the Parish, not to be re- ^{43 El. In} moved by Consent of the Parish, these poor Men may not be placed ^{what Cases} as Inmates for a Time? ^{Poor may}

Resol. They may by express Words of the Statute of the ^{be placed} *Eliz.* ^{as inmates.}

Qu. 35. If a Parishioner, or Owner within a Parish, do bring into ^{Strangers} the Parish, (without the Consent of the Parish) a Stranger of ano- ^{apparently} ther Parish; which is, or apparently, is like to be burthensome unto ^{like to be} the Parish; how may they ease themselves? ^{chargeable}

Resol. By taxing such an one to the Charge of the Rates of the ^{to the Pa-} Poor, not only having Respect to his Ability, or the Land he occu- ^{ish brought} pies, but according to the Damage and Danger he bringeth to the ^{in, the} Parish by his Folly. ^{bringers in}

Qu. 36. For warding in the Day-time, for apprehending of Rogues, ^{of them to} whether the Constable may not enlarge it to a further Time? ^{be taxed.}

Resol. Warding in the Day-time is of great Use, and must be left ^{Warding} to the Discretion of the Constables, or Direction of the Justices to ^{in the Day} vary according to the Occasion. ^{Time for}

*Alehouses
to be moderate
in
Number.*

37. *Qu.* Whether Alehouses ought to be allowed only in thoroughfare Towns, and others in other Places to be restrained only to sell to Poor out of Doors?

Resol. The Justices shall do very well to allow none but in Places very fit for their Situation and Uses, and to moderate the Number.

*Constable
the King's
Servant.*

38. *Qu.* A Man for his Quality otherwise fit to be a Constable, or of other Office of that Nature, procures himself to be the King's Servant extraordinary, and by that Means would excuse himself to serve in the Country?

Resol. A Servant extraordinary may well perform his ordinary Service in the Country, according to his Quality.

The Justices Opinion touching the Commission by which the Justices sit at Newgate.

THE Justices at Newgate sit by Virtue of two Commissions, viz. Gaol-delivery, and Oyer and Terminer.

By the Commission of Gaol-delivery, they may try all Prisoners in the Gaol, or by Bail, or such as be indicted, and will render themselves generally for all Felonies; and also for such other Offences as are particularly assigned to them by Statute.

The Statute of 4 Eliz. 3. cap. 2. giveth them Power to receive Indictments against Prisoners, or such as are upon Bail, and to proceed to try the same, viz. Indictments taken before the Justices of the Peace, and by Equity thereof, all Indictments before Coroners, 3 Mar. Bro. Commission. 24. saith, the Commission is, *Ad deliberand. Gaol. de prison. in eisdem existen*. But they cannot take Indictments as Justices of Gaol-delivery, but being Justices of the Peace, they may take Indictments against Prisoners, but not against them that be at large; forasmuch as no Power is given them, consequently they must have Means to do so, which is by Indictments. *Id querend.*

Howsoever it is clear, that they may enquire of many Offences, and take Indictments in such Cases where Power by the Statute is given to the Justices of Gaol-delivery; in such Cases where they have Authority by Law or Statute, there the Title of Indictment is, that *ad gaolam deliberand. tent.* before the Commissioners of Gaol-delivery J. S. was indicted, and the Record must be made up so.

And whereas by the Statute of 4 Eliz. 3. cap. 2. Indictments taken before Justices of Peace or Coroners, or any other against any Prisoner, then the Entry of the Indictments is returned taken, *Memorand. quod ad generalem Sessionem tent.* before A. B. C. Justices *ad pacem in Com. Middlesex or London conservand.* J. S. was indicted, and then tried before Justices of Gaol-delivery, and by Virtue of the said Statute, Indictments taken before Justices of the Peace of London or Middlesex, are tried before the Justices of Gaol-delivery.

The Commissioners of Oyer and Terminer is *Ad triand. inquirend. audiend. & determinand.* They may enquire of all Offences mentioned in the Commission, tho' the Offenders be at large, but they cannot try Prisoners upon Indictments taken before any other than themselves, as the Justices of Gaol-delivery may by the afore-said Statute, unless there be a Special Commission made, as it was in the Case of the Earl of Leicester, mentioned in *Plow. Com.* for 3 Mar. Br. Com. 24.

the ordinary Commission of *Oyer* and *Terminer* is *ad inquirend, audiend. & determinand*. Therefore they cannot determine of Things unless they made Enquiry first; and on the other Side also the Justices of Gaol-delivery may try Indictments taken before Justices of the Peace; yet if one be indicted before Commissioners of *Oyer* and *Terminer*, the Justices of Gaol-delivery cannot try the same, because the Record of the Commission of *Oyer* and *Terminer* are to be returned in the *King's Bench*. 44 E. 3. 31.

The Commission and the Records of the Proceedings before the Justices of Gaol-delivery, are to be returned to the *Custos Rotulorum* of the County, when the same Persons are Justices of Gaol-delivery, and of *Oyer* and *Terminer*, they may sit the same Day and Place, and enquire by the same Jury, but the Entry of the Records must be several, according as the Indictment is.

At the Assize in the Country, the Justices have their several Power, as the Justices of Gaol-delivery, *Oyer* and *Terminer*, and Justices of Peace.

But when the Records are made up, they must be according to the Power they made Election to proceed upon.

This is the regular and legal Course. But the Clerks of the Assizes promiscuously make Entry thereof; but if a Writ of Error be brought, they must certify according to Law, or else it will be erroneous; and so upon a *Certiorari*.

The Sessions of *London* may begin at the *Guildhall*, and then adjourn to *Newgate*; if some Indictments be at *Guildhall*, then those must be so certified: If others at *Newgate*, then the Adjournment must be mentioned, and that the Indictment was then taken.

Note, That the Trial of Indictments taken before Justices of the Peace of *London*, cannot be tried at *Newgate*, as in Nature of a Trial before Justices of the Peace at *London*, for many of the Commissioners for Gaol-delivery are not Justices of the Peace for *London*; but in such Cases the Trial must be before the Justices of Gaol-delivery: As upon Indictments taken before the Justices of the Peace of *London*; as in the Case of Indictments taken before the Justices of the Peace of *Middlesex*.

But if Indictments at *Newgate* are originally taken before them, as Justices of Gaol-delivery, then it is enquirable how the Jury sworn and impanelled to enquire at the Sessions of the Peace for *London* or *Middlesex*, do serve to present Indictments before the Justices of Gaol-delivery at *Newgate*, unless the Custom and Usage will warrant the two several Juries sworn at the Sessions of Peace for *London* or *Middlesex*, are also by the same Oath, and impanelled, to serve for the Grand Jury for the Commission of Gaol-delivery, *Oyer* and *Terminer*.

Upon Conference with the Clerks for *Newgate* of *London* and *Middlesex*, and the Clerks of Assize, and View of the several Entries, more certain Resolution may be given, as Occasion may be offered, in any particular Case.

Next, here is a Consideration to be had of three Sorts or Degrees of Poor.

§ 35.
Poor, three
Sorts.

1. Poor by Impotency and Defect.

1. The Aged, Decrepit, that are past Labour.
2. The Infant, Fatherless and Motherless, and not able to work.
3. The Person naturally disabled, either in Wit, or Member, as an Idiot, Lunatick, Blind, Lame, &c. not being able to work.
4. The Person visited with grievous Diseases; or Sickness; though casually, yet thereby for the Time being impotent.

All these (being impotent and not able to work) are to be provided for by the Overseers of necessary Relief; and are to have Allowances proportionable, and according to the Continuance and Measure of their Maladies, and Needs; and of these it may be said, *Si non paravisti, occidisti*.

2. Poor by Casualty.

1. The Person casually disabled, or maimed in his Body, as the Soldier, or Labourer, &c. maimed in their lawful Callings.
2. The Householder decayed by Casualty of Fire, Water, Robbery, Suretyship, &c.
3. The poor Man overcharged with Children.

All these last (and such others) having Ability and Strength of Body, but not sufficient Means to maintain themselves, are to be holpen, or set to work by the Overseers; and being not able to live by their Work, are in Charity further to be relieved in some reasonable Proportion, according to their several Wants and Necessities.

3. Thriftless Poor.

1. The riotous and prodigal Person, that consumeth all with Play, or Drinking, &c.
2. The dissolute Person, as the *Scrumper*, *Pilferer*, &c.
3. The slothful Person, that refuseth to work.
4. All such as wilfully spoil or imbezil their Work, &c.
5. The Vagabond, that will abide in no Service or Place.

For all these last, the *House of Correction* is fittest; and there such Persons being able in Body are to be compelled to labour, that by Labour and Punishment of their Bodies, their froward Natures may be bridled, their evil Minds bettered, and others by their Examples terrified. Also the Rule of the Apostle is, *That such as would not work, should not eat.* 2 Thef. 3. 10.

And all such Persons sent to the House of Correction, must there live by their own Labour and Work, without charging the Town or Country for any Allowance. See to that Purpose the Statute of 7 Jac. cap. 4.

But for the Overseers to suffer such Persons (or any other Persons who can live of their Labours or otherwise) to be chargeable to the Town, or to relieve such, this is a Means to nourish them in their Lewdness or Idleness, and to rob others of Relief who want it, to wrong those of their Money that pay it, and to condemn them of Oversight who dispose it.

And yet if any of these last happen to prove impotent, then according to the Statute 11 H. 7. cap. 2. they are to be relieved with *Bread and Water* without other Sustenance: And so a Reverend Judge delivered it in his Charge at Cambridge Assizes. But yet Charity wills us in Cases of manifest Extremity, that they are to be relieved by the Town. But I leave that to better Consideration.

7 Jac. 3. Where any Sums of Money (at any Time within three Years before the Making of the Statute 7 Jac. cap. 3.) hath been given, or hereafter shall be continually employed for the binding out Apprentices unto Trades and Occupations, the Parson, or Vicar, Constables, Church-wardens, and Overseers for the Poor, in Towns not Incorporated, or the most Part of them, are by the Statute appointed to have the Disposing of such Stocks and Sums of Money: Which Persons shall once every Year, within one Month after *Easter Day*, make a true and perfect Account before two or more Justices of the Peace (dwelling in or next to every the said Towns or Parishes) of all such Sums as they have so employed, and of all Bonds taken for the Payment thereof, and of all Sums remaining in their Hands, and not employed.

9 Eliz. 4. Two Justices of Peace may license the poor diseased Persons to travel to the Baths for Remedy of their Grievs, so as they be provided of necessary Relief (*scil.* With Money in their Purfes, &c.) for their Travel, and beg not. See hereof *postea* Tit. *Rogues*, cap. 47.

39 EL. 4. The Justices of Peace dwelling near where any Person suffering Shipwreck shall land, or where any poor Soldier, or Mariner shall land, may and ought to make a Testimonial under his Hand to such Persons, of their Landing, &c. and thereby to license them to pass the next direct Way to their Place of Birth or Dwelling, limiting therein a convenient Time for their passing thither. See Tit. *Rogues*.

But no Justice of Peace can license a poor Man to beg, or wander, nor travel but only in the Cases aforesaid.

3 & 4 W. & M. c. 15. The Act * 13 & 14 Car. 2. entituled, *An Act for the better Relief of the Poor*, &c. and continued by an Act made in the 1st of Jac. 2. shall be in Force from the first of *March*, 1691.

Ibid. Forty Days Notice of the Continuance of a Person to make a Settlement, shall be accounted from the Publication of Notice in Writing, to be delivered to the Church-warden, &c. which shall be read after Divine Service in the Church or Chapel on the next Lord's Day, and the same to be registred in the Poors Book. And the Church-wardens, &c. refusing to read or cause to be read such Notice as aforesaid, or shall refuse to register the same, (upon Proof by two Witnesses before a Justice of the Peace) shall forfeit 40 s. to the Use of the Party grieved, to be levied by Distress, by Virtue of a Justice's Warrant to the Constable, &c. and for Want of a Distress to be committed for a Month.

Ibid. Any Person executing any publick Office in a Parish during a Year, or paying his Share towards publick Taxes; or having no Child or Children shall be lawfully hired for a Year; or being bound an Apprentice, shall be accounted a good Settlement without Notice in Writing. And Persons aggrieved by the Determination of any Justice of Peace, may appeal to the next Quarter-Sessions, who shall finally determine the same.

Ibid. Any Person removed from one Place to another, by a Warrant of two Justices of Peace by Virtue of this Act, the Church-wardens, &c. of the Place to which he shall be removed to, shall receive him, and upon Refusal (upon Proof by two Witnesses upon Oath, before a Justice of Peace of the County, &c. to which he shall be removed) shall forfeit 5 l. to the Poor of the Parish from which he shall be removed, to be levied by Distress, &c. by Warrant from a Justice of Peace of the County, &c. to which he shall be removed, to the Constable of the Place where such Offender dwells; and for want of Distress shall be committed for 40 Days. Any Person aggrieved by the Judgment of the said two Justices,

Appeal. may appeal to the next General Quarter-Sessions of the Place from which the said Person was removed.

Register. A Book shall be kept in every Parish Church at the Parish charge, ^{3 & 4 W.} to register the Names of such as receive Alms: And in every ^{& M. c.} *Alms.* ^{15.} Easter-week they shall be called over; and a new List shall be made, and none allowed to receive Collections, but such as are authorized under the Hand of a Justice of Peace residing in the Parish, or in the Parts next adjoining, or by Order of the Justices of Peace in their Quarter-Sessions, except in Cases of pestilential Diseases, in respect of Families infected only.

What shall be a Settlement of the Poor, and where. The Husband served an *Apprenticeship* in the Parish of *M.* and there he married, and had several Children; afterwards his Wife being dead, he married another Woman, who was possessed of *Lands for a Term of Years, in the Parish of H.* where he lived with his said Wife for a Year, and then returned to *M.* and lived there two Years, and was taxed to the Poor and died; then his Widow and Children were removed by an Order to *H.* the Question was, that he returning to *M.* without giving Notice in Writing, &c. whether his being taxed to the Poor there made a Settlement; and adjudged that it would not; but this is not Law.

For it hath been adjudged, that taking a House and being *rated* ^{Shower Rep. 12.} to the Poor, and so observed by the Overseers in their Parish Book, this amounts to Notice, because 'tis plain that the * Acts of ^{1 Jac. 2.} Settlement by which Notice in Writing, and Publication of such ^{cap. 17.} Notice in the Church, is enjoined to be given, were made to prevent ^{3 & 4 W. cap. 11.} *Clandestine Settlements*, and not publick Removals, where the Parishioners might of themselves take Notice of Persons who come to be settled amongst them.

Hiring. A Servant was hired for half a Year, and when that Time was expired he was hired for a whole Year, and served the first half Year, and above half of the whole Year, for which he was last hired; and this was adjudged a good Settlement in that Parish where he was hired, because here was a Hiring for a whole Year at one Time, and a Service for a Year. This is not Law for the Hiring must be upon one entire Contract for a Year, and so must the Service.

Birth. Where the Place of the Father's last Settlement is not known, ^{2 Bulst. 351, 357.} the Children tho' legitimate may be sent to the Place of their Birth, because it is a Settling them in a certain Place, for that they may not be Vagabonds.

So where a Woman was delivered of a Child in the House of Correction, that Child is to be sent to the Parish where she was last legally settled, for that is the Place which by Law is bound to provide for it.

A Servant was hired for a Year in the Parish of *B.* and being afterwards visited with Sickness, her Master turned her away, ^{168.} and she going towards *H.* where she was born, begged for Relief, and by Reason thereof was sent as a *Vagrant* to the said Place of her Birth, who sent her back to the Parish of *B.* adjudged, that she ought to be settled in the Parish of *B.* where she was hired, and not in *H.* where she was born.

The

1 Jac. 2. The 40 Days to make a Settlement by Virtue of the Statute 13 & 14 Car. 2. cap. 12. shall be accounted from the Delivery of Notice in Writing to one of the Parish Officers of the House or Place of his Abode, and of the Number of his Family.

3 & 4 W. And by a subsequent Statute the 40 Days are to be accounted from the Time of the Publication of the said Notice in Writing in the Church, by one of the Parish Officers the next Sunday after divine Service, &c.

8 & 9 W. cap. 30. No unmarried Person hired into a Place for a Year, shall be adjudged to have a Settlement there, unless such Person shall abide in the same Service for one whole Year. ^{Hiring.}

A Travelling Woman was committed for Felony, having then a sucking Child, and was afterwards convicted and executed: Adjudged, that the Child shall be sent to the Parish where it was born, if that can be known; but if not, then to the Place where she was apprehended for the Felony. ^{Birth.}

The Wife ought to be sent to the Place where her Husband was last legally settled, tho' such Settlement was by his being a Servant, &c.

2 Salk. 488. Adjudged that by the Order of two Justices to remove a Man from one Parish to another, the Right of Settlement is determined till that Order is reversed upon an Appeal, therefore without an Appeal, the Parish to which the poor Person was sent cannot remove him to a third Parish, because that would be to falsify the Original Order which cannot be done but on an Appeal.

2 Salk. 527, 529. An unmarried Person hired for a Year, married before the Year was expired, the Justices of Peace cannot remove him to the last legal Place of his Settlement; because they cannot make the Contract between him and the Master void; for that must be done upon the Complaint of the Master, and if the married Person lives and serves the whole Year, he gains a Settlement there.

Adjudged that paying to a Scavenger's Rate in a Ward in London, doth not make a Settlement without Notice, &c. because this is not a parochial Tax, there being several Parishes in one Ward. ^{What shall be a settlement.}

A Servant was hired for a Quarter of a Year, and when that Time was expired; he was hired again for half a Year, and after that Time expired for half a Year more, and served all that Time: Adjudged that this made no Settlement within the * Statute, because the Hiring must be one entire Hiring for a Year, and the Service must be entire for that Year, and not for a Quarter of a Year and half Year, as in the principal Case, and for that Reason the Order was quashed. ^{Hiring.}

* 8 & 9 W. cap. 30. Adjudged that a Hiring ten Days after Michaelmas, as from that Michaelmas, till the following is no good Settlement; for the Reason before mentioned. ^{Hiring.}

9 Geo. No Person shall gain a Settlement by a Purchase, where the Consideration-Money doth not amount to 30 l. bona fide paid for any longer Time than the Person shall dwell on such Estate, and then shall be liable to be removed where he was last legally settled before such Purchase made. ^{Purchase.}

Of Settlement
without Notice
given.

It hath been formerly held, that the Statute 3 & 4 Will. being an explanatory Law, ought not to be taken according to Equity, but ought strictly to be pursued by *Publication of Notice in Writing*, as in the Cases following.

Banes of
Marriage.

Jf. The *Banes of Matrimony* were published in the Parish of H. between a poor Man and Woman, who being chargeable to another Parish where he lived, was by Order of two Justices, sent to the Parish of H. where the said *Banes* were published, and where he had lived for some Time; but upon an Appeal that Order was quashed, because this was not such *Notice* as was required by that Statute.

One who was born in the Parish of C. and served an *Apprenticeship* there for 7 Years, went into another Parish without giving any *Notice*, &c. and there he rented a Shop of the Widow of a Blacksmith, and likewise a Chamber for 50 s. per Ann. and this was with the Consent of the *Bailiff of the Manor*, and was publickly employed by the Parishioners to shoe their Horses: Adjudged that this publick Way of Living did not amount to Notice in writing pursuant to the explanatory Statute, tho' it might satisfy the Statute 1 Jac. 2. cap. 17. as amounting to the Delivery of Notice in Writing.

2 Salk.
476.

So where a Man was settled in one Parish, and clandestinely came into another, without giving any Notice, and there lived several Years, but being chargeable was removed to the first Parish by an Order, &c. which was confirmed upon an Appeal, and good; for tho' he had lived in the other Parish several Years, yet Notice ought to be given to make a Settlement; and since the Statutes before mentioned, Notice shall not be presumed.

2 Salk.
472.

But now the Law is held to be otherwise (*viz.*) that those Statutes being made to prevent clandestine Settlements, therefore Notice taken shall be Notice given, for where the Parishioners might of themselves take Notice of a poor Man coming to dwell in their Parish, by some open and publick Acts, that shall amount to Notice given.

There are four Exceptions out of the explanatory Act 3 & 4 Will. which make Settlements good without Notice delivered, or Publication of Notice in writing.

1. *Where a Man on his own Account executes any publick annual Office during one whole Year.*

Now as to this Matter it was held that where a poor Man was appointed to be a *Parish Clark*, which Office he executed for a Year, this made a good Settlement, and that 'tis not material whether he had the Office by the Appointment of the Parson, or by the Election of the Parishioners, because he is in for Life, and this is an Executing an Yearly Office within the Meaning of that Statute.

4

2. *Where*

2. *Where a Man is charged and payeth the publick Taxes of the Parish.*

Taxes to the King are not comprehended in this Exception, for those may be paid by Reason of the *Residence* of the Party.

^{a Salk.}
^{478.} A poor Man rented an House at 7*l.* per *Ann.* and lived therein for a Year, and paid the *Rates* and *Taxes* due for his House, which were charged on the said House, and not on his Person: Adjudged that such Payment made a Settlement.

^{a Salk.}
^{534.} A poor Man rented Part of an House at 3*l.* per *Ann.* but by an Agreement between him and his Landlord he was to pay no *Taxes*; the Apartment which he rented was distinct from the dwelling House, but it was taxed as an House, and assessed on the Landlord; the poor Man lived there for some Time, and was made Free of the Corporation, and voted at an Election of the Chief Magistrate there: Adjudged that this did not make a Settlement within this explanatory Act, tho' it might within the Statute 1 Jac. 2. and the Voting relates to the Corporation and not to the Parish.

^{a Salk.}
^{523.} It was resolved by the Court, that where a Man is taxed to the Parish Rates, and lives there 40 Days after he is taxed, and without giving Notice, &c. this doth not make a Settlement within the Act, because *Taxing* alone is not equivalent to Notice, but *Taxing* and * *Paying the Tax* is equivalent both to the Delivery of Notice, and to the Publication of that Notice in Writing.

3. *Where an unmarried Person, not having Wife or Children, shall be hired into a Service for a Year, such Service shall be a Settlement without Notice.*

^{8 & 9 W.}
^{cap. 30.} This is explained by a subsequent Statute, by which 'tis enacted that an unmarried Person hired, &c. for a Year, shall gain no Settlement unless he serve for a Year.

^{a Salk.}
^{478.} The Master put his menial Servant to a Barber in another Parish to learn to shave, for which he (the Barber) was to have 5*l.* and the Servant continued with the Barber for a Year upon this Agreement, but he himself was no Party to it: Adjudged that this did not make a Settlement in that Parish where he served the Barber, because he was not hired, but rather continued there as a Boarder to learn to shave.

The Reason of that explanatory Statute 8 & 9 Will. was because of some Doubt upon those Words (*such Service*) in the Statute 3 & 4 Will. (*viz.*) whether these Words shall relate to a Service where the Person continues *unmarried for a Year*, or where the Service was pursuant to a *Hiring for a Year*, and as to that Matter this Case happened.

^{a Salk.}
^{527.} A Servant being hired for Year, continued in that Service *Hiring* for half a Year, and then married a Woman in another Parish: Adjudged that the Words (*such Service*) in the Statute 3 & 4 Will. shall relate to a Service where the Hiring is for a Year, because the Marriage is no Hinderance of the Service of the Man; therefore the Hiring shall not be determined by it, for the Contract still continues between the Master and the Servant, and not to

to be dissolved upon the Complaint of the Parish Officers, tho' it might upon the Complaint of the Master, but that must be at his Election; for if he will suffer such a married Servant to continue in his Service for a Year, no Body else can disturb him, and that will make a good Settlement.

*Service up-
on two Con-
tracts.*

A Servant continued in his Service for a whole Year, but it was upon two Contracts, each of them for half a Year: Adjudged this made no Settlement, because the Service ought to be for a whole Year, upon *one entire Contract*, or Hiring for a Year; for the Statutes require that the Agreement shall be entire, as well as the Service; * tho' a Year after the Making the Statute, a Service for a Year and more, upon two Contracts was held, a good Settlement. ^{2 Salk. 539.}

4. *Where a Person shall be bound Apprentice, and inhabit in any Parish, such Binding and Habitation shall be a Settlement without Notice.*

The Son of a Man was bound *Apprentice* to his Father, who afterwards gave up the Indentures of Apprenticeship, but did not *cancel them*; then the Son was hired into another Parish for a Year, and served a whole Year there; and being likely to be chargeable, he was sent by an Order to the Parish where he lived as an Apprentice, because the Indentures being not cancelled, he still continued an Apprentice there. ^{Mod. Ca. 190.}

*Servant
settled tho'
the Ma-
ster was a
Lodger.*

A Poor Boy was Apprentice for four Years to a Master who was only a *Lodger* in the Parish, and had no Settlement there: Adjudged that this Apprentice having served there for some Time, hath gained a Settlement tho' his Master had none; because his Settlement did not depend on his Master, he having gained a Settlement for himself within the Statute 14 Car. 2. by living in a Parish 40 Days as an Apprentice. The Law is the same of an hired Servant, though his Master had no Settlement, if such Servant was hired for a Year, and continued in his Service for a Year. ^{2 Salk. 533.}

*Apprentice
assigned.*

The Master who lived in one Parish, took a poor Boy Apprentice, where he lived for some Time, and then *assigned* him to another Master who was an Inhabitant in another Parish: Adjudged that this Apprentice is legally settled in the second Parish where the Master lived to whom he was assigned, for tho' an Apprentice is not *assignable*, so as to pass an Interest, yet such Assignment is not void; for 'tis good by way of Covenant, and shall amount to a Contract between the Master and the Assignee.

*Orders of
Removal
quashed,
being infor-
mal and
not quash-
ed.*

An Order of two Justices, &c. was quashed, because it did not appear that it was made *upon the Complaint of the Church-wardens or Overseers of the Poor*, besides there was no *Adjudication* in it.

Appeal.

It was held by the Court for a general Rule, in Cases of Orders for Removal, that if the Parish to which a poor Person is removed doth not *appeal* in Time, such Order is conclusive to the contending Parishes, and indeed to all Parishes, except where an After-Settlement can be fixed.

An Order was quashed, tho' it was mentioned to be made upon *due Notice*, and upon hearing the Allegations and Proofs on both Sides, because it ought to be made upon *Complaint of the Church-wardens and Overseers of the Poor*, which was omitted. *It must be made upon Complaint of Parish-Officers.*

The Sessions made an Order for the Parish of C. to provide an *House* for A. and another Order to relieve B. it was held, that if those Persons are not impotent, or if they have Means to live, or are able to work, that such Orders are against Law, and ought to be quashed.

Style 154. Upon Complaint to the Sessions, that the Parents did not relieve a poor Child, they appointed two Justices to examine the Matter, &c. who made an Order for the Parents to relieve it, but it was quashed, because the Sessions could not delegate their Power to other Justices, therefore they should have made the original Order. *Sessions cannot delegate their Power.*

The Order of two Justices set forth, that the Person removed was *lately settled* in the Parish of C. &c. it should have been *last legally settled*, &c. and for that Reason it was quashed. 9 Ann. *It must be last legally settled.*

2 Salk. 473. The Order of two Justices recites, that they were *credibly informed*, that T. S. was last legally settled in the Parish of C. for which Reason it was quashed, for it must positively be adjudged to be the last Place of legal Settlement. *And so positively adjudged.*

It was recited in the Order, that the two Justices were *residing in the County of W.* for which Reason it was quashed, for it must appear they were Justices *in and for the County*, &c.

2 Salk. 585. Order for removing a poor Man, and his Wife and Family, from such a Place, &c. was quashed, because it did not appear of whom his Family consisted, * probably it might be of some who are not removable by Law. *Family.*

2 Salk. 489. A poor Man was removed from the Parish of A. to the Parish of L. and afterwards he went away to the Parish of P. which was a third Parish, and thereupon this third Parish got several Orders from two Justices to enforce the Execution of the original Order by which he was sent to L. but they were all quashed, because the Parish of P. ought to have made an original Complaint to two Justices, and upon that to have got an Order, and not to have grafted it upon the original Order of Removal from A. to L.

2 Salk. 491. In every Order of Removal of a poor Person, it ought to appear, that he is *removeable by Law*, therefore it ought to be averred, that he is *chargeable, or likely to be chargeable* to the Parish, and there ought to be an *Adjudication* of that Matter, and of the *last Place of his lawful Settlement*. *The Party must be removeable by Law.*

3 Salk. 255. An Order made upon *Complaint* generally, &c. is not good, it must be made upon the Complaint of the *Parish Officers*, and therefore where that was omitted, the Order was quashed; and tho' upon the Return of the *Certiorari*, it appeared to be made upon the Complaint of the *Church-wardens*, &c. yet that shall not supply the Defect in the *original Order*, because the Justices had executed their Authority before the Return made, and therefore they had no Power to make such a Return; they should have returned the very Order *in hæc verba*, &c.

3 Salk. 255. An Order was quashed, because it did not set forth, that the Person removed was *Poor*, or likely to become *chargeable* to the Parish. *The Party must be poor.*

Every

Order must be directed to the Parish Officers removing, and to the Parish Officers to whom removed, and not to the Officers of that Parish alone to which the Person is removed, and for that Reason the Order was quashed. 3 Salk. 256.

Certiorari returned thereof, good. The Return of the *Certiorari* in a Schedule annexed to the Writ 3 Salk. 258. was not made by two Justices, but by the *Clerk of the Peace*; but he not being the Person to whom the Writ was directed, it was quashed, and a new *Certiorari* granted, which being returned and filed, it was objected, that it did not appear by the Order, that it was made by *two Justices of the Division, &c.* pursuant to the Statute 13 & 14 Car. 2. but adjudged, that as to this Matter the Statute was only directory and not restrictive, as the Words *Quorum unus, &c.* are.

Of Appeals to the next Quarter-Sessions, and of Orders made at the Sessions. 'Tis a standing Rule in *B. R.* that where an Order of two Justices is either *affirmed or quashed* upon an Appeal, upon the *Merits* of the Cause there heard, that this is conclusive between the contending Parishes, unless there is Error in the Form. 1 Vent. 310.

Costs. The Sessions upon an Appeal from an Order of Settlement, or upon Proof of Notice of an Appeal given by a proper Officer to the Parish Officer of the Parish, (tho' the Appeal is not prosecuted) shall award to the Party in whose Behalf the Appeal shall be determined, or to whom such Notice was given, &c. his reasonable *Costs*; and if the Party who is to pay it shall live out of the Jurisdiction of the Court; then one Justice of the County where such Person shall live (upon Request to him made, and a Copy of the Sessions Order produced, and proved by a credible Witness) shall cause the Money mentioned in the Order, to be levied by Distress, &c. and for Default thereof to commit the Person to Gaol for twenty Days. 8 & 9 Will. 3. cap. 30.

Appeals, where to be determined. All Appeals against an Order of Removal of a poor Person shall be determined at the Quarter-Sessions in the County or Place from whence the poor Person is removed, and not elsewhere. *Ibid.*

Notice. No Appeal shall be proceeded on for Removal of a poor Person, unless reasonable *Notice* be given by a Parish Officer of that Parish who appeals to a Parish Officer from whence the Person is removed; and the Sessions to whom the Appeal is made shall determine the Reasonableness of the Notice; and if the Court shall be of Opinion, that the Notice was not reasonable, they may adjourn the Appeal to the next Sessions, whose Determination shall be final. 9 Geo.

And if the Court shall determine in Favour of the Appellant, they shall award so much Money as shall appear to have been reasonably paid by the Parish appealing, and expended by them in relieving such poor Person from the Time of his undue Removal to the Time the Appeal was determined, to be recovered and levied by Distress, &c.

Sessions must either affirm or reverse the Order. Upon an Appeal from an Order of two Justices, the Sessions sent the poor Man by an Order to a third Parish, for which Reason it was quashed; for the Sessions have only Power to affirm or reverse the Order of the two Justices, and they cannot make an original Order. 2 Salk. 475.

Sessions have no Jurisdiction but on Appeal. An Order was quashed upon an Appeal, but that Sessions Order was likewise quashed, because it did not appear that it came before them by Way of Appeal, and they have no Jurisdiction but upon an Appeal.

² Salk. 486. The Order of two Justices, by which a poor Man was sent from *B.* to *K.* was reversed upon an Appeal, and thereupon he went back to *B.* and that Parish sent him to *D.* a third Parish, who moved to quash it, for that the Order of Reversal was conclusive to all Parishes, and had actually settled the Man at *B.* but adjudged, that the Determination upon the Appeal was conclusive only between the contending Parishes, and not to a third Parish, who was not concerned in the Order or Appeal. *The Order upon an Appeal is conclusive as to the contending Parishes.*

² Salk. 492. There is a Difference as to the Place of Settlement; where the Order of two Justices is *confirmed*, and where 'tis *reversed* upon an Appeal, or not appealed from; for where 'tis *confirmed* or not appealed from, there that Parish to which the poor Man was removed by the original Order, shall never say, that it was not the last Place of his legal Settlement; because the Affirmance of the Order upon an Appeal is conclusive to all Parishes; but where the original Order is discharged upon an Appeal, there the Matter is at large again as to all Parishes, except that to which the poor Man was removed, which upon the Appeal was determined not to be the last Place of his lawful Settlement. *Affirmance of an Order on an Appeal conclusive to all Parishes. Reversal is conclusive only to the contending Parishes.*

² Salk. 605. An Appeal from the Order of two Justices ought to be to the next Sessions, that is, it ought to be lodged then, but there is no Necessity that it should be determined at that Time, because the Sessions may * adjourn it to another. *Appeal must be to the next Sessions.*

* ³ Salk. contra. The Order of two Justices was discharged upon an Appeal to the next Sessions; and upon a Motion to set aside this Order of Discharge, it was objected, that the Sessions did not say, whether it was discharged for a Defect in Form, or upon the Merits; for if it was for Want of Form, then the Parish from which the poor Person was removed, is not bound; but if on the Merits, then 'tis bound; but adjudged, that the Sessions are not obliged to give any Reason of their Judgment in the Orders they make, no more than any other of the Courts of Law. *Sessions need not give the Reason of their Judgment, as to the Discharge of Order.*

³ Salk. 254. Adjudged, that the Sessions have no Jurisdiction upon an Appeal, but only to reverse or affirm the original Order of the two Justices made between the two contending Parishes; therefore where they made an Order to send a poor Woman to a third Parish, not concerned before, this Order was quashed, for the Reason above-mentioned. *Sessions have no Jurisdiction but upon an Appeal.*

Litt. Rep. 73. Cro. Car. 394. S. P. W. Jones 355. Adjudged, that where a Village in a Parish had a Church before the Statute 43 Eliz: and that such Village had been used and reputed as a Parish, and had all parochial Rights and Church-wardens, &c. that this is a Parish, and chargeable to maintain its own Poor. *What shall be a Parish to relieve the Poor, and who are not to be relieved.*

Cro. Car. 92. There were two Villages in the Parish of *H.* one of which Villages had a Chapel of Ease, where they used to bury, and to chuse Overseers of the Poor amongst themselves, and had been reputed a Parish: Adjudged, that this was a Parish in Reputation, and rateable to the Poor. *Parish in Reputation.*

³ & ⁴ Will. 3. c. 11. None are to be relieved whose Names are not registred in a Parish-Book kept for that Purpose (unless by an Order of a Justice) in which Book the Names of all Persons who receive Collections shall be registred, and the Time when they were first admitted to Relief, and the Occasion thereof.

⁸ & ⁹ Will. 3. cap. 30. A Badge must be worn by those who receive Collections, (viz.) a Badge Roman P. with the first Letter of the Name of the Parish; this must be worn. *Badge must be worn.*

be upon the Shoulder of the right Sleeve; and the Person neglecting or refusing to wear it, one Justice may either abridge or suspend the Relief, or commit the Offender to the House of Correction, to be whipp'd and kept to hard Labour, not exceeding twenty-one Days.

Seize the Goods, and receive the Rents of one who runs away.

Any Person *leaving his Wife and Children* to the Parish, in such Case the Parish Officers may by Warrant of two Justices, &c. seize so much of the Goods and Chattels of the Person running away, and receive so much of his Rents and Profits as those two Justices shall order towards the Discharging the Parish, which Order being confirmed at the next Sessions, that Court may order the Parish Officers to dispose thereof as they shall think fit, and likewise to receive the Rents, &c. for the Purpose aforesaid; but to be accountable to the Sessions.

Where the Justice may order Relief, where not.

No Justice, &c. shall order Relief to a poor Person without Oath, made before him of some Matter which he shall judge to be a reasonable Cause for giving Relief, and that the Person hath applied himself to the Vestry, or to two Overseers, &c. and was denied Relief, and until the Justice hath summoned the Overseers, &c. to shew Cause why the Person should not be relieved, and they are heard, or refuse to appear upon such Summons.

The Poor must be registered in the Parish Book.

If the Justice shall see Cause to allow Relief, then the Name of the poor Person shall be entered in the Parish Book as one who is to receive Collection, as long as the Cause of such Relief continues; and no Parish Officer (unless upon some extraordinary Occasion) shall bring to Account any Money he shall give to the Poor, who is not registered in his Parish Book, on Pain of 5 *l.* to be levied by Distress, &c. by Warrant from two Justices, which said Sum shall be applied to the Use of the Poor of that Parish, by the Direction of the said Justices.

Work-houses.

The Parish Officers, with the Consent of the Majority of the Parishioners, at a publick Meeting assembled, may set up Work-houses, and two Parishes may join for one House, and may contract for the Lodging, Employing and Maintaining the Poor who want Relief, and such Poor who refuse to be kept there shall be put out of the Parish Book, and receive no Collection, &c. *Ibid.*

Parents to relieve a poor Child, and of the Settlement of Children.

The *Grandmother* of a poor Child, being herself a Person of Ability, married *T. S.* Adjudged, that he is *Grandfather* within the Statute, and liable to maintain this poor Grandchild as long as his Wife lives, but 'tis otherwise if he had no Estate with the Grandmother at the Time when he married her; yet if an Estate descends to her afterwards, which he enjoys in her Right, he is then chargeable as a *Grandfather* so long as she lives.

Grandfather in Law liable to relieve the Grandchild.

The Grandfather ought to be charged, and not the Grandmother.

The Sessions made an Order for a *Feme Covert* to keep and relieve her Grandchild; but it was quashed, because her Husband ought to be charged by an Order, and not the Wife.

The Son ordered to relieve the Father.

It was ordered by the Sessions, that the Son should pay 2 *s.* per Week towards the Relief of his Father, till the Court should order otherwise: Adjudged a good Order, tho' it was indefinite, and no certain Time limited how long he should pay the said 2 *s.* but it had been otherwise if a certain Time had been limited.

The Father charged to relieve his Daughter.

The Father was ordered by the Sessions to allow his Daughter 2 *s.* per Week, but the Order was quashed, because it did not appear that she was not able to work, or that she was sick, old, or otherwise impotent.

The

2 Salk. 470. 3 Salk. 256. The Settlement of the Child must follow that of the Parents till 'tis eight Years old, but after that Age it may acquire another Settlement; and if removed from the Place where the Parents were settled, it must appear in the Order that such Child hath gained a Settlement elsewhere.

2 Salk. 427. Mod Ca. 87. An Order was made to send an *Idiot* to the Parish where his Father was last legally settled; this was adjudged a good Order. A Child born in the Parish of *H.* the Father removed from that Parish whilst it was under eight Years old, and gained a Settlement in the Parish of *C.* adjudged that the Child shall likewise be settled there; so where the Father is settled in a Parish, and dies, and the Mother being with Child likewise dies in Child-bed, the Child born shall be settled in that Parish.

3 Salk. 257. 259. The Reason is, because it cannot be sent to its Parents where they were last legally settled, because they were both dead; therefore it must be sent to the Place where born.

But if the Parents are living, they must be sent to the Place where they were last legally settled; and as to that Matter this Case happened.

3 Salk. 259. A poor Man, lawfully settled in a Parish, had several Children born there; and afterwards he and his Wife and Children went into another Parish, and he gained a Settlement there; and being likely to be chargeable, his Children under seven Years old were removed by an Order of two Justices, to the first Parish where they were born. But adjudged that 'tis not the Birth of legitimate Children, but the Settlement of the Father which makes a Settlement for them; and the Father in the principal Case having gained a new Settlement in the second Parish, his Children must be settled there, and not as Nurse-Children, but as Part of his Family. 'Tis true, if the Father had been dead, and the Mother had married a second Husband, settled in a third Parish, in such Case her Children by her first Husband must go with her as Nurse-children, and not as Part of her Family; for those Children shall be maintained at the Charge of the Parish where their Father was last legally settled in his Life-Time, and thither they may be sent after seven Years old, as to the Place of their lawful Settlement; for this accidental Settlement of their Mother by marrying a second Husband, shall not gain a Settlement of her Children by her first Husband.

8 & 9 W. 9 & 10 W. cap. 11. A poor Man may remove into any Parish, having a Certificate from the Parish where he was settled, signed and sealed by the Church-wardens and Overseers, or the major Part of them, acknowledging the Person to be an Inhabitant legally settled in their Parish.

12 Annæ cap. 13. But he who comes into a Parish by Virtue of such Certificate, shall not have a lawful Settlement there by any Act whatsoever, unless he rent an House, &c. of 10 l. per Annum, or execute some annual Office in that Parish.

Anno 9. Annæ, The Parish of *H.* gave a Certificate to a poor Man and his Children, to the Parish of *A.* where he afterwards becoming chargeable, was sent back to *H.* by the Order of two Justices, which said Parish of *H.* sent him to the Parish of *C.* as the Place of his last legal Settlement, from which last Order the Parish of *C.* appealed, where it was set aside, and these Orders being removed into *B. R.* the Court held that the Certificate given by the Parish of *H.* is conclusive to them, to remove this poor Man to any other Parish.

Certificate Where a poor Man comes into a Parish with a *Certificate*, he can-³ Salk.
not be removed, unless he is actually chargeable to that Parish; for^{530.}
Man can 'tis not sufficient to say that he is likely to be chargeable.
not be re-
moved, un-
less he is
actually a Charge.

Certificate A Person who was born in the Parish of *A*. lived some Years in the
Man may Parish of *B*. but he had no Settlement there by Law, and yet they
be sent to gave him a *Certificate* to remove to *C*. where becoming chargeable,
a third he was sent back to the Parish of *B*. who finding that he was born
Parish. in *A*. got an Order of two Justices to send him thither: Adjudged,
that *B*. who gave the *Certificate*, ought to receive him, and to dis-
charge the Parish of *C*. to whom the *Certificate* was given, but did
not conclude them as to the Sending him to any other Parish, where
he was last lawfully settled.

Certificate About nine Years after the last mentioned Case there was a Reso-³ Salk.
The giving lution to the contrary, (*viz.*) That before the Statute *Certificates*^{531.}
a Certifi- were frequently given, but then they were only Evidences of a pri-
cate makes vate Nature between the Parishes, and in Nature of a Contract;
a Settle- but now since the Statute they are solemn Acknowledgements
ment. that the Person is legally settled with them, and as all other Parishes
are bound to receive him, so that Parish which certifies, is concluded
as to all other Parishes whatsoever; for 'tis in Nature of an Adjudica-
tion, 'tis signed by the proper Officers, and allowed by two Justices
who are proper Judges, and who upon less Evidence could have ad-
judged it a Settlement.

But if he Adjudged, that where a poor Man who hath a lawful Settlement;³ Salk.
gain a in one Parish, comes into another by a *Certificate*, and gains a Set-^{531.}
Settlement tlement there, he shall not afterwards be sent back to the Parish
after the certifying, because the *Certificate* being only a private Agreement
Certificate between the two Parishes, shall not alter the Law by which he had
given, 'tis gained a Settlement in that Parish to which the *Certificate* was
good. given.

Certificate The Mother, who was an Inhabitant legally settled in *C*. had two
shall not Children there under the Age of 7 Years; and after the Death of her
make a Husband, she with her said Children came by a *Certificate* from *C*.
Settlement to the Parish of *D*. afterwards she married another Husband, who
of the was a Parishioner in *S*. and who lived with * her at *B*. but had no le-
Children gal Settlement there, and for that Reason the Church-wardens of *S*.
not named gave a *Certificate* to the Parish of *B*. (where the second Husband
in the Cer- and his Wife lived) owning them to be Parishioners of *S*. but her
tificate, two Children by her first Husband were not named in this last *Certi-*
unless ficate: The Mother died, and the Children were sent to *S*. where
they live their Father-in-Law and Mother were settled; but it was held by
with their the Judges that *C*. was the Place of their Settlement, because that it
Parents. did not appear that they ever lived with their Mother after her second
* But it Marriage.

Of Rates Where a Parish is not able to provide for their own Poor, two Ju-
etc. what stices of Peace, by Virtue of the Statute 43 Eliz. may tax any other
Parishes of other Parishes, or out of any Parish within the same Hundred, to
Places and pay such Sums to the Parish Officers, as they shall think fit; and if
Things the Hundred shall not be thought able to relieve them, then the Quar-^{43 Eliz. 1}
shall be ter-Sessions may rate any other Parishes, or out of any Parish^{cap. 2.}
rated to within the County, &c.
maintain
the Poor.

The

1 Vent.
350.

The Words of the said Statute, (*viz.*) (*Any other of other Parishes, or out of any Parish*) are general; and therefore it hath been adjudged, that the two Justices may rate any particular Inhabitants of another Parish, and are not obliged to lay a general Rate on the whole Parish.

Raim.
476

The Husband who lived in the Parish of St. Botolph without Aldgate, lying in two Counties, (*viz.*) in London and Middlesex, had several Children born there, and afterwards he died; then the Widow married a second Husband, and they put these Children to nurse in Enfield in Middlesex; and then the Mother and Father-in-Law died; afterwards the Nurse applied her self to the Parish of St. Botolph for Money, in which Parish there is but one Church-warden, but several Overseers of the Poor for each Part thereof, and the Parish Rates are several, the Mother living and dying in that Parish which lies in Middlesex: The Justices ordered them to pay the Money, but upon an Appeal and all Orders removed into B. R. it was held that each Party of the Parish should be contributory; but it appearing that each had distinct Officers, and made distinct Rates, and Time out of Mind had made distinct Accounts to the Justices of each County, it was adjudged that each Division was a distinct Parish; adjudged likewise that the Birth of the Children is not to be regarded, but the last Place where their Father was settled.

Resolved by all the Judges of England, that the Rates for Relief of the Poor ought to be made according to the visible Estates, both real and personal in the Parishes where the Persons live, without any Respect to be had of their Estates in any other Place; and that the Occupiers and not the Owners of the Lands there ought to be rated.

1 Bull.
154

Resolved by three Judges against the Chief Justice Holt, that a Farmer shall not be rated to the Poor for his necessary Stock which he uses on his Farm, for that would be in Effect to make the Land pay twice for one and the same Thing, (*viz.*) according to a Pound Rate for his Rent, and according to the Value of his necessary Stock used on his Farm; for what is the Land but the Profits thereof, and how can those Profits arise but by the Stock.

The most reasonable Way of taxing Land, is according to the Pound Rate, and where a personal Estate, as Goods, Money, &c. are taxed, it ought to be in the same Proportion as the Lands, (*viz.*) the Value of every 100*l.* at 5*l.* per Annum, and the Person must be charged in that Place where the Goods are when the Rate is made; for if he hath not a personal Estate to that Value there, and is distreined for not paying the Rate, he may have an Action of Trespass.

By the Statute 43 Eliz. every Occupier of Houses, Lands, Tithes, Woods, Mines or other Things out of which an yearly Profit may arise, may be rated.

43 Eliz.

And it hath been resolved, that if two Houses are inhabited by several Families, tho' they had but one common Door into both, yet they are ratable as two Houses; so if one House is divided by a Partition, and inhabited by several Families, such are several Tenements, ratable severally to the Poor; but if one Family remove, then 'tis but one Tenement again.

Distress for a Quarter's Rate cannot be made till the Quarter is ended.

Adjudged likewise that where T. S. took Part, of an House in the Parish of H. on the first Day of December, and was rated as an Inhabitant, and distreined at Christmas following for a Quarter's Rent, by Virtue of a general Warrant made for the whole Year, that this was illegal, (viz.) that he could not be rated for the whole Quarter, because the Statute directs that the poor Rates shall be assessed monthly.

Resolved likewise that T. S. could not be distreined by this Warrant made before the Rate, but there ought to be a Special Warrant for this particular Purpose; and lastly, that a Distress could not be made for a Quarter's Rate before the End of that Quarter; per Holt Chief Justice, All this was adjudged in Replevin, &c. Trin. 3 Anne.

Hospital Lands.

Adjudged that Hospital Lands shall be charged in a Rate to the Poor, because no Man by appropriating Lands to an Hospital shall exempt them from such Rates, for which they were charged before; and by that Means to lay a heavier Burthen on the whole Parish.

Rates. Who shall be charged.

One who possesses Lands lying in several Parishes, shall be rated in every Parish according to the annual Value of the Land lying in each Parish.

Clergymen

Every Clergyman is to be rated for his Glebe and Tithes, according to their yearly Value so long as they are in his own Occupation, because the Statute charges every Occupier of Tithes, &c. and the Clergy are continued under those general Words, unless particularly exempted.

Of Appeals, &c. and of Overseers Accounts. Sessions may quash a whole Rate.

In a Rate for the Relief of the Poor, the Charge was laid on the real Estates; and upon an Appeal to the Sessions that Rate was quashed, and the Parish Officers were ordered to make a new Rate, which they did, but very unequal; for they charged the real Estates ten Times more in Proportion than the personal Estates; and upon another Appeal that Rate was likewise quashed, by the Sessions: And now these Orders being removed into B. R. it was insisted that the Sessions could not quash a whole Rate, for they had only Power to relieve particular Persons aggrieved; but adjudged that they might set aside a whole Rate, because the Words of the Statute are, that upon Complaint, &c. they may take such Order as by them shall be thought convenient; therefore they may either make a new Rate, or refer it to the Church-wardens, &c. to make a new one, which they have done.

Overseer not bound to lay out his own Money for Relief. If he doth, a Mandamus will not be granted to reimburse him.

An Overseer having laid out his own Money to relieve the Poor, was turned out of his Office before he could make a Rate to reimburse himself; whereupon he moved for a Mandamus to be directed to the succeeding Parish Officers to make a Rate for that Purpose, but it was denied. 'Tis true, it may be granted to raise Money for the Relief of the Poor, but not to raise Money for reimbursing an Overseer, especially since he is not bound to lay out his own Money to relieve them.

Money in the Hands of an Overseer, and he refusing to pay it

Two Justices took the Account of an Overseer, &c. and allowed it; from which the Parish appealed to the Sessions, and there it was disallowed, and they ordered him to pay so much Money over to his Successors, which they adjudged to be in his Hands, which he refusing

over to his Successor, must be levied on him by Distress, and if that fail, then to commit him.

they committed him; but it was ruled that the Commitment was illegal, because the Money ought to be levied by Distress and Sale, &c. ^{Church-warden was committed for refusing to account; it must appear that he was Overseer, &c. as well as Church-warden.} and for Default thereof, then to have committed him, but not before.

A Church-warden was committed by the two next Justices (as committed for refusing to account; it must appear that he was Overseer, &c. as well as Church-warden.) without Bail, for refusing to account for the Money received and disbursed by him; but upon an *Habeas Corpus* he was discharged, because by the Warrant of Commitment it ought to appear that he was Overseer of the Poor; for by the Statute 43 *Eliz.* that is annexed to his Office of Church-warden, and the Justices have no Jurisdiction over him as Church-warden, but as Overseer. *Mich. 15.*

Car. 2. ^{Overseers are to account before two Justices, and not to their Successors.} *Mandamus* was granted to the Justices to compel the old Overseers to account with their Successors, but it was quashed, because by the Statute 43 *Eliz.* they are to give their Accounts to two Justices; besides it did not appear by the Writ that all of them therein named were Overseers.

Mandamus to Overseers of the Poor to give an Account to the Justices of what Money they had received to the Relief of the Poor; they return that they had given an Account, and that they had disposed several Sums in such a Manner, setting it forth in the Return: Adjudged that this *Mandamus* was ill, because it was not suggested that the ordinary Means could not be had for them to account. ^{Mandamus to account ill, for it did not suggest that the ordinary Means could not be had.}

The Defendants were indicted at the Sessions for that they being duly chosen Overseers, &c. and having taken upon themselves the said Office, they, *et uterque eorum*, did collect and receive several Sums for the Relief of the Poor, and refused to account within four Days after the End of their Year: It was objected that this Indictment would not lie, because the not accounting was an Offence created by the Statute 43 *Eliz.* by which 'tis enacted that they shall account of all Things concerning their Office, under the Penalty of forfeiting 20 s. therefore that ought to be pursued. 'Tis true, that is the proper Punishment, but refusing to account was a Contempt of the Law, and therefore an Indictment will lie. ^{Indictment lies for refusing to account.}

Two Justices made an Order, that T. S. being duly elected Overseer, should take upon him that Office; it was objected that this Order was not good, because it did not appear that he was an Inhabitant or House-keeper in that Parish, and the Court will not intend that he was, therefore this Order was quashed. ^{Order for an Overseer to take upon him that Office, quashed.}

The Church-wardens of *Bishopsgate* made a Tax for the Relief of their Poor for a whole Year, which amounted to 600 l. and upwards, when they should have made only a quarterly Tax; and this was confirmed by the Alderman of the Ward, thro' Inadvertency, who fearing the Church-wardens might collect the whole Sum and make some ill Use of it, refused to grant his Warrant to distrain for this Tax, whereupon they moved for a *Mandamus*, and obtained a Rule for the Alderman to shew Cause why it should not be granted, who upon another Day shewed the Matter before-mentioned for Cause; and thereupon a Rule was made, that he should grant his Warrant to distrain quarterly. *Mich. 1721. The Church-wardens of Bishopsgate versus Alderman Beecher.*

Mandamus to the Justices to appoint Overseers of the Poor in the Town of *Rufford*; they return, that *Rufford* is an extraparochial Place, and therefore they are not to provide for their Poor.

It was objected against this Return, that admitting it to be extraparochial, yet the Justices are obliged by the Statute 43 *Eliz. cap. 2.* to appoint Overseers of the Poor, even in such Places, because in the enacting Part the Words are general, and extend to all Places, (*viz.*) *The Church-wardens of every Parish, and two or more Householders there to be nominated, &c. by the Justices, shall be called Overseers, &c.*

And the Court was of Opinion, that Places extraparochial are within the Words of the Statute, for by the general Words, the Justices have Power to name Overseers in all Parishes, which must extend to extraparochial Places as well as to Parishes in general; for where there is the same Inconvenience, it should be subject to the Controul of the Justices, and most of the Forrests in *England* are extraparochial, but they ought to maintain their own Poor.

The Husband was born in the Parish of *St. Giles in Reading*, where his Wife had likewise a Settlement before she married, but the Husband was bound Apprentice in the Parish of *Everly*, where he served two Years, then his Master broke, and the Apprentice came back to *Reading* and married there and had several Children, and died, and afterwards his Widow and Children were by Order of two Justices removed to *Everly*, which Order was quashed on an Appeal, and an Order made to send them to the Parish of *St. Giles*, because the Mother had a Settlement there before she married; and now both the said Orders being removed into *B. R.* by *Certiorari*, the original Order of the two Justices was confirmed, (*viz.*) That the Widow and the Children should be settled where the Husband and their Father was settled, and that his Death made no Alteration in the Case; and tho' the Wife had another Settlement before she married, yet that was lost by her Marriage. *Trin. 9 Geo.*

Easter
1721.
B. R.

9 Geo.
cap. 7.

Upon an Order of Removal of a poor Man confirmed on an Appeal, and removed by *Certiorari*, the Case was, (*viz.*) he lived last at *B.* at a Place called *Roscoes Tenement*, and paid Taxes by the Name of the *Occupier* of that Tenement, whereas he ought to be personally charged, and not as an *Occupier* of the Tenement; but it was held, that paying Taxes as *Occupier* of a Tenement, and naming him *Farmer* thereof, is a sufficient Designation of the Person. No Person after 25 *March* 1723, who shall be taxed to the Scavenger, or Repairs of the Highways, and shall duly pay the same, shall be deemed to have any legal Settlement by Reason of such Payment.

Nor shall any Person have a Settlement by Purchase of an Estate of Inheritance in a Parish where the Consideration-Money was not above 30 *l.* for any longer Time than the Purchaser shall inhabit on such Estate, and shall then be liable to be removed to such Parish where he was last legally settled before the Purchase made.

A Servant was hired for a Year in *Christ-Church* in *Oxford*, and afterwards lived with her Mistress three Months of that Year in the Parish of *Fawley* in *Berks*, where her Mistress was a *Visitor*, and she served the remaining Part of the Year in *Christ-Church* where she was hired, that being an extraparochial Place; and becoming Poor she went into the Parish of *St. Peter* in *Oxford*, from whence she was removed by an Order to *Fawley*, which Order was quashed upon an Appeal, the Sessions being of Opinion, that her Settlement was in *Christ-Church* where her Service determined, against which it was objected,

jected, that she could have no Settlement there, because it was an *extraparochial* Place, it being neither a Town or Parish; and by Consequence could have no Parish Officers, and therefore not within any of the Statutes relating to the Settlement of the Poor; for those Statutes require, that the *Hiring* should be in some Town or Parish, where there are proper Officers to take Care that it should not be fraudulent to charge the Parish, and she could have no Settlement in *Fawley*, because her Mistress was there as a Visitor.

As to both these Points the Court declared, that where a Servant continues forty Days in the Service of a Visitor as well as of a Lodger, he gained a Settlement, for he could not be removed, unless the Parish shew some Cause, (*viz.*) that he was brought thither on Purpose to have a Settlement; and as to the Objection, that the Statute requires the Hiring should be in a Town or Parish, and that this Servant was hired in neither, but in an *extraparochial* Place, she may properly be said to be hired in every Parish where she serves. *Pasch. B. R. 1722.*

An Appeal from a Removal of a poor Person from one Parish to another, shall not be proceeded on unless reasonable Notice be given by the Parish Officers, who make the Appeals to the Parish Officers from whence such poor Person shall be removed, the Reasonableness of which Notice shall be determined by the Justices in the Quarter-Sessions to which the Appeal is made; and if it shall appear that reasonable Notice was not given, then they shall adjourn the Appeal to the next Quarter-Sessions, and there finally determine it.

If upon an Appeal concerning any Settlement, the Sessions shall determine in Favour of the Appellant, that the poor Person was unduly removed, then they shall award the Appellant so much Money as shall appear to have been reasonably paid by the Parish on whose Behalf such Appeal was made, for the Relief of such poor Person, between the Time of such undue Removal and the Determination of the Appeal.

9 Geo.
cap. 7.

The Parish Officers, with the Consent of the major Part of the Parishioners in Vestry, or other publick Meeting assembled, may purchase or hire any Houses in the same Parish, and contract with Persons for the Lodging, Maintaining, and Employing all such Poor as shall desire to receive Relief, and there keep and employ them and receive the Benefit of their Work and Labour, for their better Maintenance and Relief: And if any Person shall refuse to be lodged or maintained in such House, he shall be put out of the Books where the Names of Persons who ought to receive Collection are to be registred, and shall have no Relief from the Parish Officers. *Of providing Work-houses for the Poor.*

Where a Parish shall be too small to purchase or hire such an House for the Poor of their own Parish only, two or more such Parishes, with the like Consent as above, and with the Approbation of a Justice of Peace dwelling in or near such Parish, may unite under his Hand and Seal in Purchasing or Hiring such House; and if any Poor of the Parishes uniting shall refuse to be lodged there, &c. he shall be put out of the Collection Book.

The Parish Officers, with the like Consent, may contract with any other Parish Officers for Lodging, Maintaining and Employing any poor Persons of another Parish; and if they refuse shall be put out of the Collection Book.

It sometimes happens, that Children are left by their Parents to the Charge of the Parish, who have something there to support them; therefore it was enacted, that the Church-wardens or Overseers, where any Wife, Child or Children are left by the Husband or Parents on the Charge of the Parish where they were born, or last legally settled, upon Application to any two Justices, and by their Warrant to seise so much of the Goods and Chattels, and to receive so much of the annual Rents and Profits of the Lands of the Husband, Father or Mother as the said Justices shall direct, for the Discharge of the Parish where such Wife, Child or Children are left; which Warrant or Order being confirmed at the next Quarter-Sessions, the said Sessions may make an Order to dispose of such Goods by Sale as they shall think fit, and to receive so much of the Rents and the Profits of the Lands as shall be ordered by the Court.

Posse Comitatus. See Chap. 171, 172.

C H A P. LXXIV.

Post-Office.

§. 1. *Office.* **N**One unless constituted by Letters Patents, shall exercise any Thing ^{12 Car. 2. c. 35.} belonging to the Post-Office thereby erected, upon Pain to forfeit 5 l. for every several Offence, and 100 l. a Week, so long as he shall continue so to do, to be recovered in any the King's Courts of Record, by Action, &c. or Information. One Moiety to the King, the other to the Informer.

§. 2. *Failer.* If in the Defect of the Post-Master, any Person riding Post shall fail of a sufficient Horse, the Post-Master General shall forfeit 5 l. A Moiety to the King, the other Moiety to the Prosecutor in any Court of Record, by Action, &c. or Information.

§. 3. *Ship.* If the Packet or Mail carried out of England, shall not be carried in a Ship, Vessel, or Boat, English built, and navigated by English; the Post-Master General shall forfeit 100 l. One Moiety to the King, the other Moiety to the Prosecutor, in any Court of Record, by Bill, Complaint, or Information.

§. 4. *Oath.* No Person shall be capable of the Office of Post-Master General, or any Employment relating to that Office; unless he shall take the Oaths of Allegiance and Supremacy before two Justices of the County, where he is or shall be resident. 12 Car. 2. c. 5.

Post-Master to appoint a Surveyor, &c. The Post-Master General may appoint Persons to measure the Roads by the Wheel, except such Roads where the Stages are already settled, and the Persons so appointed shall make fair Surveys of each Kingdom of Great Britain and Ireland, and shall leave one with the Post-Master General in London, and another at the Chief Office in ^{9 Ann. cap. 19.} Edin-
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Edinburgh, which Surveys shall be signed by the Person who made them, and by the Post-Master General, or his Deputies in each Kingdom, and by the Controulers and Surveyors at the General Post-Offices in *London*, *Edinburgh* and *Dublin*, which Surveys shall determine the Distances on all the said Roads.

He who makes such Survey shall make Oath before some Justice, *Who must make Oath before some Justice.* &c. in each Kingdom respectively, to perform the same according to the best of his Skill, and the Justice, &c. shall certify the same in Writing, to be kept and entered in the General Post-Office without Fee.

All Money due for Letters not exceeding 5 *l.* shall be recovered before Justices of Peace as small Tithes are recovered, and shall be paid before any Debt due to a private Person. *Postage of Letters shall be recovered as small Tithes.*

The Post-Master and all his under Officers must take the Oath enjoined by the Statute before some Justice of Peace of the County where resident, &c. *Post-Master and all his Officers must make Oath.*

See the Form of the Oath in the Statute, and see the Statute at large for the Postage of all Letters.

Salk. 17. A Letter, in which there were Bills of Exchange, was delivered at the General Post-Office in *London*, to one who was appointed by the Post-Master to receive Letters, and there it was opened, and the Bills taken out; and in an Action brought against the Post-Master, three Judges against *Holt* Chief Justice held, that it would not lie, because this was an Office of Intelligence and not of Insurance, or of Conveyance of Treasure; but the Chief Justice held, that the Action would lie, because the Post-Master hath a Reward, which is the Reason that Inn-keepers and Carriers are to keep Goods safely, &c. *As to the gainst the Post-Master for opening a Letter and taking out Bills.*

C H A P. LXXV. *Vide* XLI.

Preachers.

1 Mar. 1. c. 3. p. 1, 2. IF any Person shall of his own Authority, willingly and of Purpose, *§ 1. Disturbing.* by open Act, maliciously disturb any Preacher in the Time of his Sermon, or other Divine Service, or shall be aiding, procuring, or abetting thereto; or shall rescue any such Offender being apprehended, or shall disturb the Arresting of any such Offender; and that any of the said Offenders shall be brought before any Justice of Peace, (within the County where the said Offence shall be committed) then every such Justice of Peace (upon due Accusation thereupon made) shall forthwith commit every such Offender (so brought before him) to safe Custody by his Discretion.

260 *Preachers. Printers and Printing.* Chap. 75, 76.

§. 2. *Two Just. Examination.* Within six Days (after Accusation had of any the said Offences) and after the Committing of the said Offender to safe Custody by one Justice of the Peace, one other Justice of the Peace of that Shire, must join with the first Justice in the Examination of the said Offence; and if they Two, upon their Examination, shall find the Party accused guilty (and that by two sufficient Witnesses, or by his own Confession) then shall they commit him to the Gaol, there to remain without Bail, for three Months then next ensuing; and further, to the next Quarter-Sessions, &c. But inquire, if all this Statute be not repealed by 1 *Eliz. cap. 2.* in general Words at the latter End thereof, *Lamb. 199.* yet it seemeth not to be repealed in this Matter, *scil.* for Disturbance of Preachers: For this Statute containeth several Matters, and so divers Statutes. *Crompt. 14.*

And yet Sir *Nicholas Hide* at *Bury*, Lent Assizes, *An. 1629.* delivered it (as I am credibly informed) that this Statute was wholly repealed by the Statute made 1 *El. cap. 2.*

Dissenting Preachers taking the Oaths and subscribing the Declaration at the Quarter-Sessions where they live, shall not be liable to certain Penalties in former Statutes. See the Statute at large.

Such Preachers must declare their Approbation and subscribe the Articles of Religion, excepting certain Words in the 20th, 24th, 25th and 36th Articles.

Preachers thus subscribing shall not serve on Juries, and shall be exempt from Parish Offices; and he who disturbs them in Preaching shall be bound with Sureties in 50*l.* to appear at the Sessions, and being convicted, shall forfeit 10*l.* to the Crown; and if he will not find, shall be committed till the next Sessions.

The Proof must be by two Witnesses, on Oath before one Justice.

Preachers in *Anabaptist* Meetings subscribing the Articles of Religion, excepting that Part of the 27th Article relating to infant Baptism, and taking the Oaths, and making and subscribing the Declaration, shall enjoy the same Advantages as other dissenting Preachers.

CHAP. LXXVI.

Printers and Printing.

§. 1. *Scandalous Books.* NO Person shall print, or cause to be printed in England or beyond Seas, any Book or Pamphlets, wherein any Doctrine or Opinion shall be asserted that is contrary to the Christian Faith, or the Doctrine or Discipline of the Church of England; or which may tend to the Scandal of Religion, or the Church, or the Government, or Governors of Church, State, or Commonwealth, or of any Corporation or Person. Nor shall import, publish, sell, or dispose of such Books, nor procure such to be published, or put to Sale, or to be bound, stitched or sewed. 14 *Car. 2. c. 33.*

§. 2. *Entry.* No private Person shall print, or cause to be printed, any Book or Pamphlet, unless the same with all Things annexed thereunto, be first entered in the Register of the Stationers Company of London: Except Acts of Parliament and Proclamations, as shall be appointed to be printed,

printed, by Warrant under the King's Sign Manual, or under the Hand of one or more of the Principal Secretaries of State; and unless the same be licensed as followeth.

14 Car. 2. c. 33. 1. All Books of the Common Law, by the Lord Chancellor, Lord Keeper, two Lord Chief Justices, or Lord Chief Baron, or one of them; or by their, or one of their Appointment. §. 3. Licensers.

Ibid. 2. All Books of History of this State, or Affairs of State, by the Principal Secretaries of State, or one of them; or by their, or one of their Appointment.

Ibid. 3. Books concerning Heraldry, Titles of Honour and Arms, or Office of Earls Marshal, by the Earl Marshal, or his Appointment; or if none, by Garter, Clarencieux and Norroy, or any Two of them, quorum Garter unus.

Ibid. 4. All other Books to be printed or reprinted of any Art or Science, by the Archbishop of Canterbury and Bishop of London, or one of them, &c. Or by one of the Chancellors or Vice-Chancellors of either the Universities, within the Universities only, they not meddling with Common Law Books, or Books of Government; nor Books whereof the Right of Printing belongs to others.

Ibid. Every Licenser shall have a Copy in Writing of such Book, and shall deliver the same Book to the Printer or Owner, who when printed, shall deliver the same Book to be kept, and the Licenser's Approbation shall be printed with it.

Every Merchant of Books or other, shall import Books in the Port of London, and not elsewhere, without the License of the Archbishop, or Bishop of London, and before Delivery out, or exposing to Sale, shall give a Note of them to the said Archbishop or Bishop. No Persons shall open any Packs or Bales wherein Books are, nor Officers of Custom-house, suffer the same to be delivered out, upon Pain to lose his Place, before that the said Archbishop or Bishop have appointed some learned Man, with one or more of the Company of Stationers to be present, and to view. And if any heretical, schismatical, seditious, scandalous, or offensive Books be found, the same to be brought to the said Archbishop or Bishop, that the Offender may be proceeded with and the Books suppressed. §. 4. Books imported.

None shall print or cause to be printed, or import any Book or Copy, or Part of any Book, or Forms of Blank Bills, or Indentures which any Patentee or Assignee, or where no Grant is, of which the Owner hath Right of Printing, without the License of such Owner, upon Pain to forfeit the same: And 6s. 8d. for every such Book, Copy, or Bills or Forms. The Moiety to the King, the other Moiety to the Owners; or in Default of Suit, by them, within six Months, that Moiety to the Prosecutor within a Year, by Suit, in the King's Court at Westminster. §. 5. Others Right.

The Printer shall put his Name to every such Book or Thing he shall print, and shall declare the Name of the Author to the Licenser, if required; upon Pain to forfeit the same, and the Letters, Presses and Instruments. §. 6. Printer.

No Person shall put to forge or counterfeit the Name, Mark or Vincture, of any Person privileged to print, without his License, upon Pain to forfeit such Books or Pamphlet. §. 7. Forging.

No Person not licensed by the Bishop of the Diocese, nor having served seven Years Apprenticeship to a Bookseller, Printer or Binder; nor Freeman of London, as Son of these Tradesmen; nor a Member of the Company §. 8. Buying Books.

Company of Stationers, shall receive, take, or buy to sell; put away or exchange any Book whatsoever, upon Pain to forfeit the same.

§. 9. *Importing.* No Person shall print or cause to be printed beyond Sea, or knowingly import or consent to the Importation of any English Book, or whereof the greatest Part is English upon Pain of Forfeiture thereof.

§. 10. *Alien.* No Alien, except such as be free Printers or Stationers of London, shall bring in or vend by himself, or any other, Books of any Language, except licensed by the Archbishop or Bishop of London, upon Pain of Forfeiture thereof.

§. 11. *Presses.* No Person shall erect any Press or Printing-house, or demise any House or Room to that Purpose, without Notice given to the Master or Warden of the Company of Stationers thereof. No Carpenter, Joiner or Smith, shall make any Press; nor Founders make any Letters, nor import any Letters; nor buy such Letters, but upon such Notice given, upon Pain every one to forfeit five Pound: One Moiety to the King, the other to the Prosecutor.

§. 12. *Printers.* None shall be admitted a Master Printer, until by Death, or otherwise, they be reduced to Twenty, besides the King's Printers and Universities; from thence only Twenty to be continued, and but four Master Founders. And upon Death or Removal, the Archbishop or Bishop of London to nominate others to supply; who before they shall use the Trade, shall in the King's Bench, or before one or more Justices of Assize, or the Justices of Peace at their Quarter-Sessions, become bound with Sureties in 300 l. not to print any Book without Licence.

No Master Printer shall keep above two Printing-Presses at once, unless he be Master or Upper Warden of the Company, who may keep Three and no more, unless licensed thereunto by the Archbishop or Bishop of London.

§. 13. *Apprentices.* A Master Printer or Master Founder, that hath been Master or Upper Warden of the Company, may have three Apprentices at one Time and no more. He that is of the Livery may have Two and no more; he that is of the Teomanry of the Company, may have one and no more: And if any Apprentice run away, or be put away, he may not take another, until the other Name be razed out of the Hall-Book, and never admitted again.

§. 14. *Journey-men.* The Master Printers or Master Founders, shall see Journey-men-Printers that are free, and able and honest, to be employed: And if such Journeyman repair to such Master Printer, or Master Founder, not having a Journey-man, although he can do his Work by himself and Apprentice, such Master must receive him or forfeit 5 l. One Moiety to the King, the other Moiety to the Prosecutor within six Months. And if such Journey-man shall refuse such Employment, or neglect it when undertaken, he shall suffer three Months Imprisonment at the least, without Bail, upon Conviction by two Witnesses, before one or more Justices of Peace, who shall examine the Matter, and commit him to Gaol.

§. 15. *English-men.* No Master Printer or Founder shall employ about Printing any other than Englishmen and Freemen, or Sons of Freemen, or Apprentices to these Trades.

§. 16. *Searching and seizing.* One or more of the Messengers of the King's Chamber, by Warrants under His Majesty's Sign Manual, or under the Hand of one or more of His Majesty's Principal Secretaries of State; or the Master and Wardens of the Company of Stationers, or one of them, may with a Constable take such Assistance as they think fit; and at what Time they think

fit, to search all Houses, Shops, Printing-houses, and Ware-houses, where they know, or probably suspect any Books or Papers to be printed, stitched, or Bound; and to view and see the same, and to examine if licensed, and to demand a Sight of the Licence; and if unlicensed, to seize them with the Offenders, and to bring them before one or more Justices of Peace; who shall commit such Offenders to Prison, till they be tried, acquitted, or convicted, and punished: And if they find any Book, or Part of Book or Books unlicensed, containing Matters contrary to the Doctrine or Discipline of the Church, or against the State and Government, they may seize them, and bring them before the Archbishop and Bishop of London, or Secretaries of State, or one of them, who shall take such Course for the suppressing of them, as they shall think fit.

All Printers, Founders, and other Persons working in those Trades ^{§. 17.} offending against this Act, and shall be thereof convicted by Verdict, ^{Punishment, and} Confession, or otherwise, shall for the first Offence be disabled to use his ^{by whom.} Trade for three Years: And for the second Offence be disabled for ever, and receive such Punishment by Fine, Imprisonment, or Corporal Punishment, not extending to Life or Limb, as by the Justices of the Kings Bench, or of Oyer and Terminer, or of Assize, or of the Peace, in their Quarter-Sessions, shall be thought fit to be inflicted.

Justices of Peace, in their Quarter-Sessions, shall hear and determine such Offences by Indictment or Information, and shall certify yearly all Fines, and shall make Process and Execution, as in other Cases by Law they may.

Every Printer shall reserve three Copies of the best and largest ^{§. 18.} Paper, of every Book printed or reprinted; and shall before vending, ^{Copies.} bring them to the Master of the Stationers Company, one whereof for the King's Library, and one for each University.

Nothing in the Act to infringe the Rights of either the University ^{University} ties, as to Licensing or Printing in either the Universities.

No House of a Peer, or other Person not free of the recited Trades, ^{Search.} shall be searched, but by the King's Warrant under his Sign Manual, or under the Hand of one or both Secretaries of State.

This Act was to continue for two Years, to commence from June the ^{Continu-} Tenth, 1662. And by another Act made 16 Car. 2. c. 8. the said first Act ^{ance.} was continued until the End of the next Session of Parliament. And ^{Expired.} by the Act 17 Car. 2. c. 4. the same first Act is continued until the End of the first Session of the next Parliament.

Probate of Wills. See Chap. 41. Tit. Fees.

Process. See Chap. 193.

CHAP. LXXVII. *Vide XLII.*

Prophecies.

‘**T**OO true is that of the sharp French Historian Comines, lib. 6. ^{§. 1.} of his Commentaries, *Tribunt Angli Plurimum vaticiniis,* and great Mischiefs have arisen from the Multitude's too great Cre-

‘ Credulity to (and others phantastical Publication, and setting on
 ‘ Foot) false Prophecies; against which Evils were the Statutes of 33
 ‘ H. 8. 14. & 3 E. 6. 15. made; but they being expired, was made the
 ‘ Statute of 5 El. 15. whereby it is provided, that if any shall publish
 ‘ or set forth by Writing, &c. Speech, or Deed, any fond phantastical
 ‘ or false Prophecy, upon, or by Occasion of any Arms, Fields, Beasts,
 ‘ Badges, or Things accustomed in Arms, Cognizances, or Signets;
 ‘ or by Reason of any Time, Year, Day, Name, Bloodshed, or War,
 ‘ to make any Rebellion or Disturbance in the Realm, and other the
 ‘ Queen’s Dominions; he shall be imprisoned for a Year without Bail,
 ‘ and forfeit 10*l*. And for the second Offence be imprisoned for Life,
 ‘ and forfeit all his Goods. A Moiety to the King, the other to the
 ‘ Prosecutor.

§. 2. ‘ Justices of Peace have Authority to hear and determine these Of-
 ‘ fences, so as the Party be accused within six Months.

§. 3. It seemeth by the general Words of the Statute, that every Justice ^{P. Just. 24.}
 of Peace may imprison (by the Space of one Year, without Bail) such as ^{P. Prop. 1.}
 advisedly shall publish any false Prophecies (contrary to the Tenor of
 the Statute, 5 Eliz. 15.) to the Intent thereby to make any Rebel-
 lion, Insurrection, or other Disturbances within the Kings Dominions.
 ‘ But *Quære* hereof, for they are so enabled as Justices of Assize are,
 ‘ which is in their Courts, and Imprisonment is to ensue Conviction;
 ‘ which must be in the Sessions.

C H A P. LXXVIII. *Vide* XLIII.

Prison.

§. 1. **A** NY Justice of Peace, having sent or committed to the Gaol an ^{§ Jac. 10.}
 Offender (for any Offence or Misdemeanour) if the Offender ^{P. 7. 8.}
 (having Means or Ability thereto) shall refuse to bear and defray the
 Charges of such as shall convey and guard him or them to such Gaol,
 or shall not at the Time of their Commitment, pay or bear the same,
 then the said Justice may give his Warrant under his Hand and Seal
 (to the Constable of the Hundred or Constable of the Town) where
 such Offender shall be dwelling, or from whence he shall be com-
 mitted, or where the said Offender shall have any Goods within that
 County or Liberty, to sell so much of the Offender’s Goods, as by the
 Discretion of the said Justice will satisfy such Charges, &c. the Ap-
 praisment to be made by four Inhabitants of the Parish where such
 Goods be (yielding to the Party the Overplus of the Money:) And
 where the Offender hath no such Goods, then the Charge thereof must
 be born by the Town where the Offender was taken, and the Taxa-
 tion made on the Town for that Purpose, must be allowed under the
 Hand of one Justice of Peace; and by like Warrant from such Justice,
 the Goods of the Person refusing to pay such Taxation, may be di-
 streined and sold by the Constable and Church-wardens by Appraise-
 ment made by four Inhabitants, rendring the Overplus.

§. 2. ‘ The next Justice of Peace, or the Quarter-Sessions, may adjudge
 Arrest. Fees. what is fitting to be taken for each Night’s Lodging, or other Expences,
 by any Under-Sheriff, Bailiff, Sergeant, or other Officer that hath a-
 ny

ny Person in his Custody, by Virtue of any Process or Warrant, while he is under Arrest, and before he is carried to Prison. 22 &

23 Car. 2.

Three Justices of Peace, whereof one to be of the *Quorum*, may settle what Fees any Person shall pay for their Commitment, Discharge, and Chamber-rent. 22 & 23 Car. 2.

Upon the Presentment of the Grand Jury at the Assizes or Quarter-Sessions, that the Gaol is out of Repair, the Sessions upon examining Workmen, may agree on a Sum for building or repairing it, and levy the same on the several Divisions and Hundreds of the County by a Sessions Warrant to the High Constables, and may make a Receiver.

11 & 12 Willi. cap. 9. made perpetual by 6 Geo. cap. 19.

All Justices of Peace shall use their Endeavour and Diligence to examine and find out all Legacies and Gifts for the Benefit of poor Prisoners for Debt, and to send for Deeds, Wills, Writings, and Books of Accompts, and any Person concerned therein; and to examine them upon Oath, and to order and settle the same. 22 &

23 Car. 2.

Which Legacies, Gifts, Rates of Fees, and the future Government of Prisons, shall be signed and confirmed by the Justice of Peace, and the Judges of the Circuits, and fairly written, and hung up in a Table in every Gaol, before the first Day of November, 1671. And be registered by the Clerk of the Peace, and after such Establishment, no other greater Fees to be taken. 22 & 23 Car. 2.

The Justices of Peace, at their Quarter-Sessions, may provide a Stock of Materials to set Prisoners on work, in such Manner as other County Charges are levied and raised: Provided no Parish be rated above Six-pence a Week; and may provide fit Persons to oversee them, and make Orders therein, and alter or amend them.

19 Car. 2. c. 4.

The Sheriff or Person having the Custody of the Gaol, by Consent of four Justices of Peace (*Quorum unus*) upon emergent Occasions, may provide other safe Places for Removal of Sick, or other Persons to be there kept, and conveyed to Gaol-delivery. The like may be done in Corporations. 19 Car. 2. c. 4.

30 Car. 2.
c. 4.

If any Person who was released out of Prison by Virtue of the Act of 30 Car. 2. shall at any Time be found or suspected by any of his Creditors to have in his own Hands, or in the Hands of others, or to his Use, or in Trust for him, any Money, Goods or Chattels in Value over and above what he is allowed to have by the Statute of 30 Car. 2. or by 22 & 23 Car. 2. c. 20. other than such Goods in his Shop or Ware-house, as he shall have been credited, or trusted with, since the Time of his Discharge, and for what he shall be really indebted; and do not upon convenient Demand pay his Debts therewith as far as the same will reach: That then at the Request of any Creditor, the Oaths in the said Acts mentioned, shall be tendred by him again, by any Justice of Peace empowered by the said Act of 30 Car. 2. to minister it, or by any Judge of the Court, wherein there is Judgment against him, which if he refuse to take he shall be remanded to Prison in Execution. See the Statutes and Oaths at large.

31 Car. 2.
c. 2.

Persons Subjects of this Realm committed for any Crime, shall not be removed into Custody of any other Officer unless by some legal Writ; or where the Prisoner is delivered to the Constable, &c. to be carried to Gaol, or sent by any Judge or Justice of Peace his Order to a

Work-house, or removed within the County in Order to his Trial or Discharge, or in Case of Fire, Infection or Necessity. And Persons signing any Warrant for Removal, contrary hereunto, or countersigning the same, and the Officer or Officers that obey or execute such Warrant, shall for the first Offence forfeit to the Party grieved 100*l*. and for the second Offence 200*l*. and be incapable to hold his Office; to be recovered by Action of Debt, Suit, Bill, Plaint or Information, in any of the King's Courts at *Westminster*.

C H A P. LXXIX. *Vide XLIV.*

Purveyors.

- §. 1. *Universities.* IF any Person within five Miles of *Cambridge* or *Oxford*, shall refuse reasonably to serve the Provision of the said Universities, then may the Vice-Chancellor, and any two Justices of Peace within the same University, Town or County, under their Hands and Seals, allow any the Kings Purveyors to provide any Corn or Victual of any such Person, to the Use of the King, as they lawfully may in other Places, without the said Precinct. 13 Eliz. 21 p. 33.
1 Jac. 25.
21 Jac. 28.
3 Car. 4.
- §. 2. The Vice Chancellor (or his Commissary for the Time being) in either of the Universities, with any two Justices of Peace of the same County, may by the Oaths of Twelve Men, inquire of, and punish the Offences of Purveyors, Takers, Badgers, Loaders, Poulters, or other Ministers for the King's Majesty, and of all other common Poulters, &c. committed contrary to the Statutes for the Privileges of the Universities, &c. *scil.* In taking or bargaining for any Victual or Grain, within *Cambridge* or *Oxford*, or within five Miles of either of them; or in taking or bargaining for any Victual or Grain brought within the said five Miles by any common Minister of any College or Hall, to be spent there; without the License of the Chancellor, or Vice-Chancellor in Writing, under the Seal of their Office; or not according to such License: And every such Offender shall forfeit the quadruple Value of such Grain or Victual, so taken or bargained for, and shall suffer Imprisonment three Months without Bail; which Punishments the said Vice-Chancellor, &c. and two Justices of Peace may see duly executed accordingly. 28 & 3 P. & M. c. 15.
13 El. 21.
P. Just. 60.
6 Purv. 32
- §. 3. If any Buyer, or other Officer of any Lord or other Person (but only for the King and Queen, and their Houses) do take any Victual, Corn, Hay, Carriages, or any other Thing whatsoever, of any of the King's People, in any wise against their Will (without lawful Bargain between the said Buyer and Seller made) then upon Request made to the Mayor, Sheriff, Bailiff, Constable, Officer, or other the King's Ministers (under which Word * Ministers, the Justices of Peace be also comprehended) * of the Cities, Boroughs, Counties, or Places, where such Taking shall happen to be, the said Mayor, Sheriff, Minister, and Justice of Peace, shall presently take and arrest such Buyer and Officer so offending, and them shall send to the King's next Prison, there to remain without Bail, until they have re-delivered the said Goods so taken, or the Value thereof. 23 H. 6. c. 14.
62. a.

12 Car. 2. c. 24. But it being impossible to regulate these Purveyors by the many ^{§. 4. Taken away.} Laws made against them, and that on the utmost Penalties by the Statute of 12 Car. 2. c. 24. confirmed by 13 Car. 2. c. 7. It is enacted, That no Sum or Sums of Moneys, or other Thing shall be taken, levied, &c. for or in Regard of any Provision, Carriages or Purveyance for the King, his Heirs or Successors.

12 Car. 2. c. 24. No Person by Commission, &c. or otherwise by Colour of Purveyance, for the King or Queen of England, or for any Children of any King or Queen, or their Household, shall take Timber, Fewel, Cattle, Corn, Grain, Malt, Hay, Straw, Viſtual, Carts, Carriages, or other Thing whatsoever, from any Person, without the Owners free Consent had without Menace or Enforcement; nor shall summon any Carriages for such Use (but this, as to Carriages is altered by 13 Car. 2. c. 8. & 14 Car. 2. 20.) without the Owners Consent.

12 Car. 2. c. 24. No Pre-emption shall be allowed or claimed, in Behalf of the King, Queen, or their Children, in Market or out of Market; but the Kings Subjects may sell and dispose of their Goods as they list.

12 Car. 2. c. 24. If any Person shall make Provision or Purveyance for the King, Queen, or Children, or impose any Carriages or Things, on any Pre-^{§. 1. Penalty.} tence or Colour of any Warrant whatsoever. The Justices of Peace, or two, or one of them that dwell near; and the Constables of the Parish or Village, may, and are hereby enjoined to commit, or cause, &c. the Offenders to the Gaol until next Sessions, there to be indicted and proceeded against for the same, at the Request of the Party grieved; and the Party shall have his Action for treble Damages, and treble Costs.

See more of Purveyors, Tit. Felons, §. 4 & 5.

And see Tit. Carriages.

CHAP. LXXX.

Quakers.

13 & 14 Car. 2. c. 1. Persons so called, may not assemble themselves together above ^{§. 1. Assembly.} five in Number, of the Age of sixteen Years or more, under Pretence of Religious Worship, not established by Law, upon Penalty for the first Offence upon Conviction by Verdict or Confession, or by notorious Evidence of the Fact, to pay a Fine not exceeding 5*l.* for the first Offence; and after Conviction for the first, being convicted of a second Offence, 10*l.* to be levied by Warrant of the Parties before whom the Conviction shall be, and for want of Distress and Non-payment within one Week after Conviction: For the first Offence Imprisonment in Gaol, or House of Correction, three Months; the second Offence six Months, without Bail, which Penalties shall be employed for maintaining the House of Correction; the third Offence, the Party offending shall abjure the Realm, or otherwise the King may give Orders to transport the Offender to any of his Majesty's Plantations beyond the Seas.

‘ And Justices of *Oyer* and *Terminer*, Assize, Gaol-delivery, and Justices of the Peace in open Sessions, may hear and determine the same Offences within their respective Limits. And any Justice of Peace, Mayor or chief Officer of a Corporation, may commit to the Gaol, or bind over Persons with sufficient Sureties, in Order to their Conviction.

But this is now taken away by the * A & 8 Georgii, ff. the Quakers subscribing the Declaration of Fidelity, and the Christian Belief, before two Justices, shall be entituled to the Benefit of that Act. 8 Geo. 1 cap. 6.

No Quaker shall be a Witness in Criminal Causes, or serve on Juries, or bear any Office or Place of Profit in the Government; and their solemn Affirmation is to go for an Oath. 7 & 8 W. 1 Geo. 1 cap. 7. made perpetual

Every Quaker after the 4th of May, 1696. shall, where any Oath is lawfully required, instead thereof make a solemn Declaration in these Words, viz. *I A. B. do declare in the Presence of Almighty God, the Witness of the Truth of what I say;* which shall be taken to be of the same Force in all Courts of Justice, as an Oath taken in the usual Form: And upon Condition that he hath declared any Matter or Thing, which if the same had been in the usual Form of an Oath, would have amounted to wilful Perjury, he shall incur the same Penalties as in Case of Perjury. 7 & 8 W. 1 Geo. 1 c. 24.

Penalty.

Tithes.

Quakers refusing to pay or compound for great or small Tithes, or to pay Church-Rates, the two next Justices of Peace of the same County, (other than such Justice as is Patron of the Church, or interested in the said Tithes) may, upon Complaint, convene before them such Quaker, and examine upon Oath the Truth of the said Complaint, and ascertain what is due to the Parties complaining, and by Order under their Hands and Seals direct the Payment thereof (not exceeding 10*l.*) and such Quakers refusing to pay according to such Order, any one of the said Justices may by Warrant under his Hand and Seal, levy the Money so ordered to be paid, by Distress and Sale of the Offender's Goods. And any Persons finding themselves aggrieved by any Judgment given by such two Justices may appeal to the next Quarter-Sessions for the County, &c. and the Justices there may finally hear and determine the Matter: And if they continue the Judgment, then to decree the same by Order of Sessions, and give Costs against the Appellant, to be levied by Distress and Sale of Goods. Proceedings upon this Act shall not be removed or superseded by *Certiorari* or other Writ out of the Courts at *Westminster*, unless the Title of such Tithes come in Question. The said Statute is made perpetual by 1 Geo. cap. 7. Ibid

Appeal.

Certiorari.

Rape. See postea *Tit. Felonies by Statute.*

Rates. See *Stock of the Shire.* Cap. 96.

Recognizance. See *Chapt. 168.*

C H A P. LXXXI. *Vide XLV.**Recusants.*

THIS Word *Recusant* is now become of that Signification, as ^{§. 1.} to describe a Person on the Account of Adherence to the Church and Court of *Rome*, in her pretended Supremacy over all other Churches in Spiritual Matters, under which Head she also would comprehend all *Temporal Affairs*, She denying to Temporal Princes, (claiming under God Imperial Thrones, and justly possessing them, and to the King of *Great Britain* in particular:) That Supremacy that they all lawfully may, and do some of them actually claim, as their great Charge and Duty; and which by the Statute of 26 H. 8. c. 1. is justly united to the Imperial Crown of this Kingdom.

The Exactions of that Church and Court being intolerable, and ^{§. 2.} their Ends and Designs proving dangerous to Temporal Government, the same King assisted with his Parliament, did that which other Princes, even in Popish Times, and Countries sought to redress. Who although they cut off some Branches, yet leaving the Root untouched, the Tree grew even to a monstrous Height. This wise Prince laid the Ax to the Root, by the Statute 26 H. 8. c. 1. having by the Statute of 24 H. 8. c. 12. discharged all Appeals to *Rome*, and put the Causes in a right Channel, to receive a just and righteous Decision. And by the Statutes of 25 H. 8. c. 20. & 26 H. 8. 3. prevented the Court of *Rome* from receiving *First-Fruits for Ecclesiastical Livings*, and taken Care for a Succession of Archbishops and Bishops: And also by the Statute of 25 H. 8. 21. taken off the Payment of all *Impositions to Rome*, the Clergy having in Convocation recognized that King to be *Supreme Head of the Church*, and taking Care for the due Management of this asserted Jurisdiction.

Thus stood the King's Supremacy all the Residue of the Reign of *Henry* the Eighth, and *Edward* the Sixth, and Queen *Mary* although a Papist, yet kept *Supremum caput* in her Style, and thereby summoned her first Parliament; but soon after omitted it, and the Statutes made in her Father's Time for asserting the King's Supremacy were repealed. But her Authority being short, 1 *El.* c. 1. those Statutes of Repeal were repealed, and consequently the Statutes by Queen *Mary* repealed, were revived. By which, as that Statute recites, *all usurped and foreign Jurisdiction was put away*, and the ancient Jurisdctions, Superiorities, and Preheminences of Right belonging to the Imperial Crown of this Realm thereto united, by Reason whereof the Subjects were kept in good Order, and disburdened of great and intollerable Exactions. And by that Statute of 1 *Eliz.* 1. an Oath was directed for good Subjects to take; the Form you may see *Cap. 4. §. 5.* and a Law made the same Year, *cap. 2.* for establishing a *Common Prayer-Book in English, and Uniformity in Divine Service*, and requiring all Persons to come to Church and hear the same, under divers Penalties.

Now

§. 3.
Defection
by the
Pope's
means.

Now although the Common Prayers and Service of the Church were in *English* all *Edward* the sixth's Time, yet the King's Subjects came to Church and received the Sacrament all his Time, and no open Defection was on that Account. And although the Common Prayer-Book and Service, received some Alteration different from that of *Rome* in 1 *Eliz.* Yet until the eleventh Year of Her Reign, did all Her Subjects come to Church promiscuously, so that the Bishop of *Rome* perceiving his Authority at last Gasped, by his Bulls *interdicted the Kingdom, absolved her Subjects from their Obedience to their Prince*, and thereby wrought that Schism which those that profess Obedience to that See, have ever since maintained and had not the Pope then interposed, it is probable a perfect Union had been in the *English* Church, which will be more reasonable to believe, if we consider how few Persons quitted their Livings and Dignities, for refusing Communion with the *English* Church, and refusing the Oath prescribed by 1 *El.* 1. namely, not much above an

9000 Benefices in England.

100 of 9000 and more, as *Cambden* Witnesseth. After which Practices, the State thought it necessary to provide for it self; and thereupon the Statute of 5 *El.* 1. was made, that any that maintained the Bishop of *Rome's* Authority, should incur a *Premunire*. And the Statute of 13 *El.* 1. against such as levied War, or intended bodily harm to the *Queen*. And another 13 *El.* c. 2. against such Bulls, and the Bringing over and publishing them; and the Statute of 23 *Eliz.* 1. against reconciling to *Rome*; and the Statute of 27 *Eliz.* 2. for departing of Priests and Jesuits; and the Statute of 29 *Eliz.* 6. against Frauds in Conveyances were made.

§. 4.
Sectaries.

Near which Time there rose another sort of People, called (by 35 *El.* 2.) *Sectaries* and Disloyal Persons, who did oppose the *Queen's* Authority in Causes Ecclesiastical, but not upon Popish designs, and on that Account forbore to come to Church, against whom that Statute is made.

§. 5.
First mention of Recusants.

The first Statute I meet with, wherein the Word *Recusants* is mentioned, is that of 35 *Eliz.* 1. which mentioned the Statute of 23 *Eliz.* 1. to be made against Recusants, which was against the Papists only. And then comes 35 *Eliz.* 2. that mentions a *Popish Recusant*. Which Word is plainly taken from refusing to take the Oath of 1 *Eliz.* 1. And refusing to read or hear Common Prayers, prescribed by 1 *Eliz.* 2. And to express the Words of those Statutes, is a Refusal with Obstinacy.

§. 6.
Recusants of two sorts.

So that now there being a twofold Recusancy, Popish and Sectarian, it will be necessary to observe and distinguish the Laws made against them.

§. 7.
Statutes.

The Statutes now in Force against *Recusants* of all Sorts, seem to be 1 *Eliz.* 1. 1 *Eliz.* 2. 8 *Eliz.* 1. 23 *Eliz.* 1. 5 *Eliz.* 1. 13 *Eliz.* 2. 35 *Eliz.* 1. And 35 *Eliz.* 2. 1 *Jac.* 4. 3 *Jac.* 4. 3 *Jac.* 5. 7 *Jac.* 2. 7 *Jac.* 6. 29 *Eliz.* 6. 3 *Car.* 2. 27 *Eliz.* 2. All which are yet in Force, and particularly 35 *El.* 1. is by 16 *Car.* 2. c. 4. declared to be in Force. And all the Rest, except 35 *El.* 1. against Sectaries, were perpetual. All which by 1 *Jac.* 4. are ordered to be put in due and exact Execution. I call that of 35 *El.* 1. a Law against Sectaries, for so the Preamble mentions it to be; and by an Exception therein contained, Popish Recusants

fants are excepted. And I observe some material Differences between them.

First, The Statute of 35 *Eliz.* 1. requires Conformity from all Persons, or else inflicts Abjuration. The Statute of 35 *Eliz.* 2. for Nonconformity from Persons of mean Estates only, and that the Residue repair to their Dwellings, Confinement there, and Forfeiture of Goods and Land.

Secondly, The Statute of 35 *El.* 2. is Temporary to the End of the next Session of Parliament, when it might have expired, had not some clamorous Persons Enormities revived it: But the Statute of 35 *El.* 1. is perpetual.

Thirdly, No married Women are punishable by 35 *El.* 1. but are thereout excepted; but by 35 *El.* 2. married Women are declared to be within all Branches and Penalties of it, but Abjuration.

1 *El.* 2. The Matter of Recusancy stands in two Particulars, first, *Ab-* §. 7.
senting from the Church; secondly, refusing the Oath prescribed ^{Two points}
by 1 *El.* 1. and 3 *Fac.* 4. ^{of Recu-}
^{sancy.}

All and every Person, inhabiting within this Realm, or other §. 8.
the King's Dominions, shall (having no reasonable excuse to be ^{Absence}
absent) endeavour themselves to resort to their Parish Chappel ac- ^{from}
customed, or upon reasonable Let thereof, to some usual Place ^{Church.}
where Common Prayer, and such Service of God shall be used in
such Time of Let, upon every Sunday and Holiday, and there re-
main orderly and soberly, during the Time of Common Prayer,
Preaching and Service, upon Pain of Punishment by the Censures
of the Church; and to pay for every Offence 12 d. to be levied by
the Church-wardens, to the Use of the Poor by Distress.

23 *El.* 1. The Statute of 23 *Eliz.* 1. saith, that every Person of 16 Years ^{By 1 W. 2.}
of Age, which shall not repair to some Church, Chappel, or usual ^{8.}
Place of Common Prayer, but forbear the same contrary to 1 *El.* 2. ^{This doth}
And being thereof lawfully convicted, shall forfeit for every Month ^{not extend}
20 l. &c. ^{to Dis-}
^{sen-}

If any Subject shall not resort to Church, Chapel, or other
Place appointed, &c. every Sunday, and hear divine Service, ac-
cording to 1 *El.* 2. One Justice, upon Confession or Oath of Wit-
ness, shall call the Party before him; and if he can make no ex-
cuse, the Justice shall give a Warrant to the Church-wardens to le-
vy 12 d. for every Default, by Distress; and if no Distress, to com-
mit him till Payment, 3 *Fac.* 4. So as the Party be impeached
within one Month.

Godbolt.
Rep. 148. 1. Note, that in an Indictment upon 1 *El.* 2. it need not be a- ^{Cases}
verred, that the Offender was an Inhabitant; for that ought ^{thereupon}
to come of the other side. See *Anne Mannock's Case.* M.

3 *Fac.* 1.

2. That where the Statute of 23 *El.* 1. says, being thereof con-
victed, does not intend a former Conviction, but a Convicti-
on in the same Action; as is resolved in *Dr. Foster's Case.*

Moor's
Rep. 606. 3. That where the Statute 23 *El.* says, every Person of sixteen
Years, &c. an Indictment that saith, *Quod A. B. de, &c. Ex-*
istens Aetat. 16. Annorum, &c. This *Existens* shall go to the
Time of the Offence, and not to the Time of the Indictment.
Talbot's Case.

4 That

4. That *Feme Coverts* are within the Statutes of 1 *El.* 2. & *Bulstr.* 3. p. 87.
 23 *El.* 1. touching all the Penalties for *absence from the Church*, Hob. p.
 and an Information lies against the *Husband* for the same, as 179.
 was resolved in *Laws's Case*. P. 13 *Jac.*
5. That the Penalty of 12 *d.* a Sunday, by 1 *El.* 2. & 3 *Jac.* 4. Co. 11. 91.
 and of 20 *l.* *per mensem*, by 23 *El.* 1. shall be both paid. & 63.
6. That the Statute of 1 *El.* 2. extends to *Holidays* as well as
Sundays; but the Statutes of 23 *El.* 1. & 3 *Jac.* 4. extend
 only to *Sundays*.
7. Note also, this Repairing to Church every Sunday, must be
 as well to *Evening Prayers*, as to *Morning Prayers*; for it
 ought to be an intire Day, and an intire Service. And so Sir
Richard Hutton, one of the Judges of the Court of Com-
 mon Pleas, did deliver it in his Charge at *Cambridge Lent*
Affizes, Anno 1 *Car. Regis*; and therewith agreed Sir *Robert*
Bartlet at Summer *Affizes*, Anno 9 *Car. Regis*.

Holidays. And because 1 *El.* 2. extends to *Holidays*, it is convenient to
 observe which are *Holidays*: And as to that, I refer you to the Sta-
 tute of 5 & 6 *E.* 6. c. 3. And the *Rubrick* of our present Ser-
 vice-Book, now confirmed by 14 *Car.* 2. c. 4.

§. 9. The *Oath of Supremacy* must be taken by Spiritual Persons, be- 5 *El.* 1.
Oath. fore such as have Power to admit them; and so of Lay Persons,
 preferred by the King to any Lay Office, Ministry, or Service, be-
 fore such as shall admit them to that Office, or before such Per-
 sons as by the King's Commission shall be appointed; and if such
 Person refuse, he is disabled to take that Office: But if any Person
 having any Estate of Inheritance in the Office, shall first refuse,
 and afterwards during his Life, take it, he shall enjoy it. *Vide the*
Oath Hic. cap. 4. §. 5.

§. 10. If any shall by Writing, Printing, Teaching, Preaching, express 1 *El.* 1.
Maintain- ing Foreign Authority. Words, Deed or Act, maintain, set forth, or defend the Authority
 or Jurisdiction, Temporal, or Ecclesiastical, of any Foreign Prince,
 Prelate, State, Potentate, formerly claimed or usurped, or shall
 put in Use or execute any Thing for Maintenance or Defence of
 the same, every such Offenders, their Abettors, &c. convicted
 thereof after the Course of the Common Law, shall lose to the
Penalty. King all their Goods and Chattels, real and Personal; and if the
 Offender have not 20 *l.* in Goods, over and besides his Goods, he
 shall be imprisoned for a Year.

§. 11. And if the Offender be a Spiritual Person, he shall forfeit all 1 *El.* 1.
Oath. his Spiritual Promotions, and the next Patron or Donor may pre-
 sent, as if he were dead; for the second Offence, he shall incur
 a Premunire; and for the third, suffer as for Treason, but there
 must be two Witnesses, and they brought Face to Face; and as
 touching aiding, &c. it must be proved by two Witnesses, that
 the Person had Knowledge of the Offence.

All Persons admitted *Ad ordines Sacros*, or taking any Degree; 5 *El.* 1.
 in the University, School-Masters, and Teachers of Children; and
 all Persons taking any Degree or Learning at Common Law; and
 all Attorneys, Prothonotaries and Philizers; and all Persons admit-
 ted to any Ministry, or Office belonging to the Canon Law, or
 any other Law allowed in *England*, or that shall belong to any
 Court, shall before Admission, in open Court, or before Commis-
 sioners

- ‘ sioners take the Oath. The Lord Chancellor or Lord Keeper
 ‘ may direct Commissions to tender the Oath to any Persons, with-
 ‘ out further Warrant.
- 5 EL. 1. ‘ The Persons compellable to take that Oath, and refusing, shall *Refusing.*
 ‘ incur a *Premunire*.
- 5 EL. 1. ‘ The Persons having Power to tender the Oath, shall within for-
 ‘ ty Days, if the Term be open, or the first Day of the next Term
 ‘ after the forty Days, return the same Refusal into the *King's Bench*,
 ‘ upon Pain of 100*l*. And the Sheriff of the County, where the
 ‘ *King's Bench* is, may impanel a Jury; and upon the Evidence of
 ‘ that Certificate, and other Evidence, may indict the Party.
- 35 EL. 1. ‘ If any Person *above sixteen Years of Age* that absents from Church §. 12.
 ‘ by a Month, shall practise, go about, or perswade any Subject or *Sectaries.*
 ‘ Person, in the King's Dominions, to oppose his Authority Ecclesiasti-
 ‘ cal, and shall move or perswade any to abstain from Church, or
 ‘ receiving the Communion, or to be present at Conventicles; or if *Conventi-*
 ‘ he shall be present at Conventicles, being thereof convicted, shall *cles.*
 ‘ be committed to Prison without Bail, until he conform and make
 ‘ the Submission required by that Act, if within three Months after
 ‘ such Conviction, he shall not conform and submit, being required
 ‘ by the Bishop of the Diocese, or a Justice of Peace, or the Minister
 ‘ or Curate, he shall in open Sessions or Assizes, or Gaol-delivery * ab- * *This is*
 ‘ jure the Realm, and depart at such Haven, Port and Time the Ju- *now taken*
 ‘ stices shall assign him, which Abjuration the Justices shall record *away by*
 ‘ and certify to the Assizes. 35 EL. 1. *the Statute*
 ‘ *1 Will. 3.*
 ‘ *cap. 1.*
 ‘ *upon taking the Oaths and subscribing the Declaration.*
- ‘ The Oath of Abjuration may be taken by the Justices of Peace of §. 13.
 ‘ such Recusants, in this Form, or to this Effect: *Abjura-*
 ‘ *tion.*
- 35 EL. 1. ‘ **Y**OU shall swear, That you shall depart out of this Realm of Oath of
 ‘ England, and out of all other the King's Majesty's Domi- *Abjura-*
 ‘ nions; and that you shall not return hither or come again into any *tion.*
 ‘ of His Majesty's Dominions, but by the Licence of Our said Sove-
 ‘ reign Lord the King, or of his Heirs. So help you God. See
 ‘ *Stamf. 119. Vide Wilk. 40.*
- 35 EL. 1. ‘ And such Recusants thereupon shall depart out of this Realm, *Departure.*
 ‘ at such Haven and Port, and within such Time as shall in that Be-
 ‘ half be assigned and appointed by the said Justices of Peace, unless
 ‘ he be letted and stayed by such lawful Means or Cause as the
 ‘ Common Law doth allow in Cases of Abjuration for Felony, &c.
 ‘ 35 EL. 1.
- 35 EL. 1. ‘ If any such Recusant shall refuse to make such Abjuration, or af- *Not going.*
 ‘ ter such Abjuration made, shall not go to such Haven, and within
 ‘ such Time as is so appointed him; and from thence depart out of
 ‘ this Realm, according to this Statute, or after such Departure shall
 ‘ return or come again into any His Majesty's Realms or Dominions,
 ‘ without His Majesty's special Licence in that Behalf first obtained,
 ‘ in every such Case the Person so offending shall be adjudged a Fe-
 ‘ lon. *Ibid.*
- 35 EL. 1. ‘ The Justices of Peace before whom any such Abjuration shall be *Certificate.*
 ‘ made, shall cause the same to be presently entred upon Record be-
 ‘ fore them, and shall certify the same at the next General Gaol-de-
 ‘ livery

- livery to be holden in the same County. 35 *El.* 1. All this is now taken away by the Statute 1 *Will.* 3. *cap.* 18.
- Submission.* If after Conviction, and before required to abjure, the Party repair to some Church or Chapel on some Sunday or Holiday, and hear Divine Service; and before the Sermon or Reading of the Gospel, make publick Declaration of his Conformity in the Form therein express'd, *viz.* I *A. B.* &c. the Party offending shall be discharged of all Penalties, &c.
- Certificate.* The Minister or Curate shall forthwith enter it into a Book, and within ten Days certify the same to the Bishop of the Diocese. 35 *El.* 1.
- Relapse.* If the Party shall afterwards relapse, and refuse to go to Church, or shall go to Conventicles, he shall stand in the same Plight, as if no Submission had been made. 35 *El.*
- Penalties.* The Penalties by 23 *El.* 1. and 35 *El.* 1. shall be recovered to the Queen's Use, by Action of Debt, Bill, Plaint or Information, in the *King's Bench*, *Common Pleas* and *Exchequer*; and a third Part shall go to charitable Uses. 35 *El.* 1.
- Courts.*
- §. 14. Every Person born in *England*, or made Denizen, above sixteen Years of Age, having a Place of Abode, and being a Popish Recusant, that shall be convicted of Absence from the Church, and being in *England* at the Time of such Conviction, shall within forty Days after such Conviction, if at Liberty; or if restrained, within twenty Days after, repair to his Place of Abode, and shall not remove five Miles from thence, upon Pain to lose his Goods and Chattels, and all his Lands, &c. for his Life. But if he have no Place of Abode, he shall within the Time aforesaid, repair to the Place where he was born, or his Father or Mother dwells, upon Pain of Forfeiture as aforesaid: And being come to such Place, shall within twenty Days present himself, and give his Name to the Minister or Curate, and to the Constable, &c. And the Minister or Curate shall enter his Name in a Book, to be kept in the Parish; and the Minister and Constable shall certify the same to the next Sessions, and the Justices shall enter it in the Rolls. 35 *El.* 2.
- §. 15. A convicted Popish Recusant of small Ability (not having twenty Marks Freehold *per Annum*, or forty Pounds in Goods, nor being a *Feme Covert*) that shall not repair to his Place of usual Dwelling, or Place of Birth, or where his Father or Mother is dwelling, and there notify himself to the Minister and Constables, according to the Statute of 35 *El.* 1. Or shall afterwards remove above five Miles from the same. If after he be apprehended, and shall not conform himself within three Months, in coming usually to Church, and in making such publick Submission, as in the said Statute is appointed, being thereunto required; then any two Justices of Peace, or Coroner of that County, may require such Offender to abjure the Realm, and may assign him the Time, and Haven, &c. And every such Offender, shall upon his corporal Oath, before the said Justices, abjure this Realm of *England*, and all other the King's Dominions for ever. 35 *El.* 1.
- The Abjuration must be entred and certified, as herein is directed by 35 *Eliz.* But because that of 35 *El.* 1. was made against Sectaries, and this of *cap.* 2. against Popish Recusants, I have so distinguished them; and having observed some Difference in penning the two Acts, the only remaining Difference is in the Words of Submission in the Acts, that of Sectaries by 35 *El.* 1. being thus:
- I *A. B.*

35 El. 1. ' I A. B. do humbly confess and acknowledge, That I have grievously
 ly offended God, in contemning Her Majesty's godly and lawful Go-
 vernment and Authority, by Absenting my self from Church, and
 from hearing Divine Service, contrary to the godly Laws and Sta-
 tutes of this Realm; and in using and frequenting disordered and
 unlawful Conventicles and Assemblies, under Pretence and Colour of
 Exercise of Religion. And I am heartily sorry for the same, and
 do acknowledge and testify in my Conscience, that no other Person
 hath, or ought to have any Power or Authority over Her Majesty.
 And I do promise and protest, without any Dissimulation, or any
 Colour, or Means of any Dispensation, That from henceforth I will,
 from Time to Time, obey and perform Her Majesty's Laws and Sta-
 tutes, in Repairing to the Church, and hearing Divine Service,
 and do my utmost Endeavour to maintain and defend the same. §. 16.
Submission
of Secta-
ries.

35 El. 2. ' That of Popish Recusants by 35 Eliz. 2. being thus, I A. B. do
 humbly confess and acknowledge, That I have grievously offended
 God in contemning Her Majesty's godly and lawful Government and
 Authority, by Absenting my self from Church, and from hearing
 Divine Service, contrary to the godly Laws and Statutes of this
 Realm. And I am heartily sorry for the same, and do acknow-
 ledge and testify in my Conscience, That the Bishop or See of Rome,
 hath not, nor ought to have any Power or Authority over Her Ma-
 jesty, or within any Her Majesty's Realms or Dominions. And I
 do promise and protest without any Dissimulation, or any Colour, or
 Means of any Dispensation, That from henceforth I will from Time
 to Time, obey and perform Her Majesty's Laws and Statutes in Re-
 pairing to the Church, and hearing Divine Service, and do my ut-
 most Endeavour to maintain and defend the same. §. 17.
Submission
of Recu-
sants.

35 El. 2. ' Which Submission by 35 El. 2. is in the same Manner to be re-
 quired and made, and to have the same Advantage, and to be cer-
 tified in the same Manner as by 35 El. c. 1. And the like Provi-
 sion touching Relapse, Women shall be comprehended in, and bound
 by every Branch of that Statute, except those of Abjuration. Women.

' All fraudulent Conveyances made by Persons that come not to
 Church, whether upon Power of Revocation, or with any Intent
 for the Maintenance of himself or Family, are void. 29 El. 6. §. 18.
Fraudo-
lent Con-
veyances.

' Convictions of Recusancy shall be in the Court of King's Bench,
 Assize or Gaol-delivery, and not elsewhere, and shall be certified
 and estreated into the Exchequer the next Term, after such Convic-
 tion in such convenient Certainty for the Time, and other Circum-
 stances, as that the Exchequer may award Process for Seizure of the
 the Lands and Goods of such as have not paid the Forfeiture
 27 El. 6. But see Pye and Lovel's Case, Hob. 204. It was resolved,
 That an Information or Action of Debt lay in the Common Pleas,
 notwithstanding this Statute: For this Statute extends only to Indict-
 ments for the Queen's Benefit, and not to Informations. §. 19.
Convicti-
ons, where.
This Stat.
doth not ex-
tend to Pro-
testant Dis-
senters
Will. 3.
cap. 18.

29 El. 6. ' Such as are convicted, shall pay their Forfeitures into the Ex-
 chequer, at two Times in the Year, without any other or further
 Conviction, having not conformed 39 El. 6. And if they be not
 paid, the Process shall issue to seize the Goods, and three Parts of
 the Lands. §. 20.
Forfeiture.

§. 21. *Indictment* ' No Indictment shall be quashed for not mentioning the Offender ^{29 El. 6.}
 to have been in *England*, nor shall any Indictment be reversed for ^{3 Jac. 4.}
 ' Lack of Form, or for other Matter whatsoever, save only by the
 ' direct Traverse of not coming to Church. ^{29 El. 6. 3 Jac. 4.} But
 ' if he go to the Church where he most abides, or if none such, to
 ' the Church next adjoining to his Dwelling-house, and there hear
 ' *Divine Service*, and receive the Sacrament; he shall be admitted
 ' to avoid, discharge, reverse, and undo the same Indictments, and all
 ' Proceedings thereupon.

§. 22. *Conviction by Proclamation.* ' Upon such Indictment at Assizes or Gaol-delivery, Proclamation ^{29 El. 6.}
 shall be made, that the Offender shall render his Body to the She- ^{3 Jac. 4.}
 riff before next Assizes or Gaol-delivery. And if he do not appear,
These Stat. do not extend to Protestants Dis- he shall stand convicted as upon Trial; and now by ^{3 Jac. 4.} Ju-
seniers by 1 Will. 3. cap. 18. stices of Peace may hear, inquire, and determine of Offences for not
 coming to Church and receiving the Sacrament, as Justices of As-
 sise may do by former Laws, and may make Proclamation upon
 such Indictments for the Parties to render themselves to the Sheriffs,
 &c. Or else convict and certify them as is appointed by ^{29 El. 6.}
 But the Render must be to the Sheriff, Bailiff, or Gaoler of the Li-
 berty, &c. And the Forfeiture must be paid into the *Exchequer*,
 and Certificates of such Recusancy, as by the Statute of ^{29 El. 6.}
 is directed.

§. 23. *King's Election.* ' The King may refuse the *20 l. per mensem*, and take to the two ^{29 El. 6.}
 Parts of the Lands, and all the Goods, &c. And an Advowson is ^{1 Jac. 4.}
 without that Clause. *Jones's Rep. p. 20, &c.*

' The King shall seise two Parts only of the Recusant's Estate to ^{1 Jac. 4.}
 satisfy the *20 l. per mensem*, but not the third Part, either in the
 Hand of the Ancestor or Heir: But after the Death of the Ancestor,
 two Parts shall remain liable to the Arrears of *20 l. per mensem*.

§. 24. *Conformity Sacrament* ' Any Popish Recusant that conforms, shall within a Year next af- ^{3 Jac. 4.}
 ter receive the Sacrament, and so once every Year after, or forfeit
20 l. for the first Year, *40 l.* for the second Year, and *60 l.* for the
 third Year, and *60 l.* every Year after, until he receive it; and if he
 receive it, and again offend in not receiving a Year, he shall forfeit
 for every Year *60 l.* &c. ^{3 Jac. 4.}

House. ' A Recusant's House shall be reserved to him, and the King's two ^{3 Jac. 4.}
 Parts shall not be demised to a Recusant.

§. 25. *Conformity* ' If a Recusant reform, and be obedient to the Laws and Ordinances ^{1 Jac. 4.}
 of the Church, and duly go to Church, and continue there du-
 ring Service and Sermon, he shall during the Time of such Confor-
 mity, be discharged of all Penalties. ^{1 Jac. 4.}

Heir. ' If a Recusant die, and his Heir be no Recusant, he shall be dis-
 charged of all Penalties, in respect of his Ancestor's Recusancy; or
 if the Heir be a Recusant and afterwards conform, he shall be in
 like Manner discharged: But if the Heir be within sixteen Years of
 Age, and at sixteen shall become a Recusant, he shall be charged
 with the Penalties run upon his Ancestors, until he do conform; but
 then shall be discharged.

' If such Offender conform or die, no Forfeiture of *20 l.* a Month,
 or Seifure, shall ensue upon full Satisfaction of all Arrears. ^{29 El. 6.}

§. 26. ' Any Person guilty of any Offence against that Statute, except ^{23 El. 1.}
 Treason and Misprision of Treason, which shall before Judgment
 conform before the Bishop of the Diocese, or before the Justices be-

fore

fore whom he shall be indicted, arraigned or tried, having not made the like Submission upon his Trial, for the first Offence shall upon his Recognition of such Submission in open Assizes or Sessions of the County where he is resident, be discharged of all Offences, except Treason and Misprision of Treason.

3 Jac. 4. ' If any Person shall willingly maintain, retain, relieve, keep or §. 27.
harbour in his House, any Servant, Sojourner, Stranger, who shall *Servant.*
forbear for a Month together, to hear Divine Service, not having a *This doth*
reasonable Excuse, shall forfeit 20*l.* for every Month, &c. *not extend*
to Pro-

3 Jac. 4. ' Any that shall keep or retain in his, her, or their Service, Fee or *testant*
Livery, any Person that shall forbear going to Church by a Month, *Dissenters.*
shall for every Month he shall so keep, forfeit 100*l.* *1 Will. 3.*
cap. 18.

3 Jac. 4. ' But a Man may keep his Father, Mother, or Ward, &c.

3 Jac. 4. ' Justices of Peace may hear and determine all Offences of that Sta- *Justices of*
tute, except Treason. *Peace.*

3 Jac. 4. ' Wives shall not forfeit for not receiving the Sacrament, during §. 28.
Marriage, nor Husbands for their Wives not receiving. *Wives.*

23 El. 1. ' By the Statute of 1 El. 2. Justices of Oyer and Terminer, and of §. 29.
Assize, have Power to inquire and determine the Offences; but by *Justice of*
23 El. 1. the Justices of Peace have also Power to inquire and de- *Peace.*

termine thereof and of the Offences the Party must be indicted at the next Sessions by 1 Eliz. 2.

1 El. 2. ' The Justices of Peace may inquire of the Offences against 23 Eliz.

1. And the Statutes made 1, 5 & 13 El. touching acknowledging her Majesty's Supreme Government in Causes Ecclesiastical, and other Matters touching the Service of God, or coming to Church, or establishing true Religion in this Realm; as other Justices therein named may do, and may hear and determine all Offences against this Act, except Treason and Misprision of Treason.

23 El. 1. ' All Forfeitures of Money shall be divided into three Parts, one §. 30.
third Part to the Queen for her own Use; another third Part to the *Forfeitures*
Queen for the Use of the Poor of the Parish, where the Offence is committed, to be delivered by the Principal Officers of the Exchequer, without further Warrant; and the other third Part to the Prosecutor in any Court of Record, &c.

5 El. 1. ' Justices of Peace in Sessions, have Power to inquire of all Offences §. 31.
against 5 El. 1. against such as shall maintain the Authority of *Justices of*
the Bishop of Rome, and shall make Certificates within forty Days *Peace.*
after the Indictment into the King's Bench, or every one in Default, forfeits 100*l.* 5 El. 1.

3 Jac. 4. ' Any two Justices of Peace, the one being of the Quorum, may out §. 32.
of Sessions, require any Person of the Age of eighteen Years or a- *Oath of*
bove, which is convicted or indicted for any Recusancy, other than *Obedience.*
Noblemen or Noblewomen, for not repairing to Divine Service; or which have not received the Communion twice the Year past; or which travelleth the Country, and is unknown (and being examined upon Oath) shall confess, or not deny themselves to be Recusants; or that shall confess, or not deny, that he or she had not received the Sacrament twice the Year past, to take the Oath of Allegiance appointed by the Statute 3 Jac. c. 4. And if such Person shall refuse to answer upon Oath, such Justices of Peace examining him as aforesaid, or to take the Oath of Allegiance, then the said two Justices shall commit the same Person to the common Gaol, there to remain without Bail until the next Assizes or Quarter-Sessions;

sions; but Noblemen and Noblewomen are excepted, as not to be dealt withal herein by the Justice of Peace.

Certificate.

Which Justices shall certify under their Hands to the next Sessions, the Names, &c. In which Sessions, the Oath shall be again tendered to them; and if they, or any other shall refuse, he or they so refusing, shall incur a Premunire, except *Femes Covert*, who shall be committed till they take it. The Oath *vide hic cap. 4.*

Premunire Women.

Also any two Justices of Peace may take the said Oath of Allegiance of such Persons as have Charge of Castles, Fortresses, Block-houses, or Garrisons; and of all Captains, having Charge of Soldiers within this Realm, and upon Refusal, may commit the Offender, being of the Age of eighteen Years, to the common Gaol, there to remain without Bail till the next Assizes or Quarter-Sessions. 7 Jac. 6.

Also by the same Stat. 7 Jac. c. 6. any two Justices of Peace, the one being of the *Quorum*, may require any other Person or Persons, Man or Woman, be they Recusants or not, of the Age of eighteen Years or above (under the Degree of a Baron or Baroness) to take the said Oath, and may commit them as aforesaid, upon their Refusal.

§. 33.
Oath.

And by the said Statute, if any Person whatsoever of the Age of eighteen Years, under the Degree of a Baron, shall stand and be presented, indicted or convicted, for not coming to Church or receiving the Communion, before the Ordinary or any other, having lawful Power to take such Presentment or Indictment; or if the Minister, Petty Constable and Church-wardens, or any Two of them, shall complain to any one Justice of Peace near adjoining, and the said Justice of Peace shall find Cause of Suspicion; then that Justice, or any one other Justice of Peace, within whose Commission or Power such Person shall be, upon Notice thereof, shall require such Person to take the said Oath: And if any Person shall refuse to take the Oath tendered to him or her as aforesaid, then such Justice or Justices shall commit such Offender to the common Gaol, there to remain without Bail, till the next Assizes or Quarter-Sessions.

Certificate.

The said two Justices of Peace shall certify in Writing, subscribed with their Hands, at the next Quarter-Sessions, the Names and Place of Abode of such Persons, as have so taken the said Oath before them, by Force of the Statute of 3 Jac. 4.

And it seemeth requisite, That the Justice or Justices of Peace do make like Certificate at the next Assizes or Quarter-Sessions, of such Persons as have taken the said Oath before them, by Force of the Statute 7 Jac. 6.

§. 34.
Submission after Reconciling.

Such Persons as have been reconciled to the Pope, if they shall return into the Realm; and thereupon within six Days next after their Return, shall submit themselves to his Majesty, and his Laws, before any two Justices of Peace, jointly or severally, of the County where they shall arrive; the said Justices may take such Submission, and withal may take their Oath of the Supremacy, and their Oath of Allegiance. And the said Oaths so taken, the said Justices shall certify at the next Quarter-Sessions, upon Pain of 40 l.

§. 35.
Seminary.

Any two Justices of Peace of the County where any of his Majesty's Subjects (not being a Jesuit, or other Popish Priest, &c.) brought up in any Seminary shall arrive within six Months next after Proclamation to be made in that Behalf in the City of London, under the Great

- Great Seal of *England*, may within two Days next after such Return) receive his Submission to his Majesty and his Laws, and take Submission his Oath to the Supremacy.
- 37 EL. 2. The Justice or Justices of Peace, that shall receive or take any Submission or Oath as aforesaid, by Force of the Stat. 37 EL. c. 2. shall certify the same into the *Chancery*, within three Months after such Submission, upon Pain to forfeit 100*l.* 37 EL. c. 2. P. *Jesuits* 11.
- 7 Jac. 6. §. 36. If any married Woman under the Degree of a Baroness, being lawfully convicted as a Popish Recusant, shall not within three Months after such Conviction, repair to the Church and receive the Communion, &c. Any two Justices of Peace, (the one being of the *Quorum*) may commit her to Prison, there to remain without Bail, until she shall conform her self, &c. unless the Husband shall pay the King for the Wife's Offence for every Month 10*l.* Or else the third Part of his Lands and Tenements, at the Husband's Choise, for so long as she remaining a Recusant convict, shall continue out of Prison; during which Time, and no longer, she may have her Liberty. *Women*
- 3 Jac. 4. §. 37. The Church-wardens and Constables of every Town, Parish, or Chapel, or some or one of them; or if none, then the Constables of the Hundred, as well in Places exempt as not exempt, shall once every Year present the monthly Absence of all Popish Recusants from the Church, and the Names of their Children nine Years of Age and upwards, abiding with their Parents; and their Age, and the Names of their Servants at the Quarter-Sessions, which shall be received and entered without Fee, by the Clerk of the Peace or Town-Clerk respectively; or else every Church-warden, Constable or High Constable, shall for every Default of Presenting lose 20*s.* And every Clerk of the Peace or Town-Clerk, for not Recording, 40*s.* And if upon such Presentment the Party shall be convicted (being not before convicted) the Party making such Presentment, shall have 40*s.* of the Recusant's Goods and Estate, to be levied in such Form as the major Part of the Justices, by Warrant under their Hands and Seals, shall appoint. *Presentments*
- 3 Jac. 4. §. 38. Every Person going beyond Seas to serve any foreign Prince, State or Potentate, and shall not take the Oath before the Customer or Comptroller of the Port, or their Deputy or Deputies, shall be adjudged a Felon, 3 Jac. 4. If any Gentleman or Person of higher Degree, or any Person that hath born, or shall bear any Office or Place of Captain, Lieutenant, or any other Office or Charge in Camp, Army, or Company of Soldiers, or Conductor of Soldiers, shall go voluntarily out of the Realm to serve any foreign Prince, State or Potentate, or shall serve them before they shall with good Sureties become bound in 20*l.* with Condition not to be reconciled, &c. nor to enter into any Practice against the King or Realm, but shall disclose it, shall be a Felon. Which Bond shall be given before the Customer, &c. 3 Jac. 4. Which Bond and Oath he shall certify into the *Exchequer* once every Year, or forfeit 20*s.* for every Oath, and 50*l.* for every Bond not certified, &c. *Serving beyond Seas*
- 3 Jac. 4. The Branches of Treason in reconciling, &c. or being reconciled, shall be proceeded upon in the King's Bench, Assize, or Gaol-delivery, as if the Offence had been committed in the County where he is taken. 3 Jac. 4. *Reconciling*
- See the Penalties of conveying a Child, or any other, under his Government, beyond the Seas, to enter into any College, &c. or to repair *Repairing*

repair to them for Instruction, or to be resident in any Popish Family, and be there instructed by any Popish Person, or to be sent, or to go or continue there for those Ends, and to send any Money, &c. to, or for the Maintenance of any there, or under the Name of Charity, &c. towards the Relief of any Priory, &c. 1 Jac. 4. 3 Jac. 5. 3 Car. 1, 2. But of those Offences, I take it, the Sessions cannot meddle with or inquire.

The Penalty of Reconciling, &c. and being reconciled, &c. See 3 Jac. 5. Tit. *Treason*.

§. 40. *Armor.* All such Armor, Gunpowder and Munition, as a Popish Recusant hath in his House or Houses, or elsewhere, or in the Hands of any other of his Disposition, shall be taken from him by Warrant of four Justices of Peace at their General Quarter-Sessions (other than necessary Armor, in the Discretion of the Justices, for the Defence of his Person and House) and shall be kept at the Costs of such Recusants, in such Place as the Justices shall appoint. 3 Jac. 5.

After any Warrant be granted from any four Justices of Peace in 3 Jac. 5. Sessions, for the Taking away the Armor of any Popish Recusant convict; if any such Recusant having any such Armor, Gunpowder or Munition, or if any other Person having any such Armor to the Use of any such Recusant, shall refuse to declare unto the said Justices of Peace, or any of them, what Armor he or they have, or shall hinder or disturb the Delivery thereof, to any of the said Justices, or to any other Person authorized by their Warrant, to take and seise the same; then every such Offender shall be imprisoned by Warrant of, and from any two Justices of Peace of such County, by the Space of three Months without Bail.

§. 41. *Coming to Court.* No Popish Recusant convicted, shall come to the Court or House 3 Jac. 5. where the King or Heir apparent is, unless commanded by the King or Warrant from the Council, or any of them, upon Pain to forfeit 100*l.* A Moiety to the King, another Moiety to the Discoverer and Prosecutor, in any of the King's Courts of Record. 3 Jac. 5.

§. 42. *Want of Satisfaction. Service in House.* He that cannot satisfy the Money forfeited within three Months, shall be committed to Prison, until he have paid, or conform. And a Man having Service in his House, and going four Times a Year to some Church or Chapel, shall incur no Penalty.

§. 43. *Child. Oath.* Before some Justice of Peace of the County, Liberty or Limits, 3 Jac. 5. where the Parents of a Child sent beyond Seas, without License, did dwell; such Child must take the Oath of Allegiance, expressed 3 Jac. c. 4. And they that were beyond Seas, before the Making of this Act, are to take the same Oath within six Months after their Return, before some Justice of Peace where such Persons inhabit, before they can take the Benefit of a Gift, Conveyance, Devise, or Descent, &c. of any Lands or Tenements, &c. 3 Jac. cap. 5.

§. 44. *Books. Search.* Any two Justices of Peace, from Time to Time, may search the 3 Jac. 5. Houses and Lodgings of every Popish Recusant convict, and of every Person whose Wife is a Popish Recusant convict, for Popish Books and Relicks of Popery; and they may presently deface and burn such Books and Relicks as they shall find and judge not convenient for them: Yet if it be a Relick of any Price, the same is to be defaced at the General Sessions of the Peace, and to be restored to the Owner.

§. 45. *London.* Any Popish Recusant that shall dwell in London, or within ten 3 Jac. 5. Miles of it, which be indicted or convicted of Recusancy, or shall
forbear

- forbear to come to Church three Months, shall within ten Days after such Indictment or Conviction depart thence: And if he live in London, or ten Miles, &c. shall give up his Name to the Lord Mayor; and if he live above ten Miles, then to the next Justice of Peace, upon Pain to forfeit 100*l.* &c.
- 3 Jac. 5. No Recusant convict shall practise the Common or Civil Law, as Counsellor (not as Chancellor, as the Print is) Clerk, &c. Nor practise Physick, nor as an Apothecary, nor be a Judge, Minister, Clerk, or Steward of any Court, or keep any Court, nor bear any Office in any Camp, Troop, or Company of Soldiers, nor bear any Office in any Ship, Castle or Fortrefs, but be utterly disabled, and shall forfeit 100*l.* &c. 3 Jac. 5. §. 46.
Bear no Office.
- 3 Jac. 5. A Recusant convict, or having a Wife that is a Popish Recusant convict, shall not after his or her Conviction, exercise any publick Office or Charge in the Commonwealth, except such Husband and his Children nine Years old, and his Servants or Household, shall once every Month, having no Excuse, at Church hear Divine Service, and his Children and Servants, at Times appointed, receive the Sacrament, and bring up his Children in the true Religion. 3 Jac. 5.
- 3 Jac. 5. A Popish Recusant convicted shall be reputed an excommunicated Person until Conformity, and take the Oath of 3 Jac. 4. And it may be pleaded in Disability in all Actions, except for such of his Lands, &c. as are not to be seised, &c. 3 Jac. 5. And the Sheriff and Officer may upon an *Excommunicato capiendo*, break the House to apprehend him. 3 Jac. 4. §. 47.
Disability.
- 3 Jac. 5. Any Man being a Popish Recusant convict, that shall be married otherwise than according to the Orders of the Church of England, shall be disabled to be Tenant by the Curtesy; and a Woman otherwise married, shall lose her Dower, Jointure, Widow's Estate, and Free Bench, or any Portion of Goods, by the Custom of any City, &c. And if such Man marry a Woman that hath no Land whereof he may be intituled, *As Tenant by the Curtesy, he shall forfeit 100*l.** 3 Jac. 5. §. 48.
Marriage.
- 3 Jac. 5. If a Popish Recusant baptize not his Child at Church, or Place appointed for Baptism by a lawful Minister, within a Month, if it may be carried thither, otherwise by the Minister of the Parish, &c. He, if he live a Month after the Birth (or if he die within a Month) the Mother shall forfeit 100*l.* A third Part to the King, a third Part to the Prosecutor, and a third Part to the Poor. §. 49.
- 3 Jac. 5. If a Popish Recusant not excommunicated, shall not be buried in a Church or Church-yard, or not according to the Law Ecclesiastical; the Executor or Administrator knowing the same, or the Party causing the same, shall forfeit 20*l.* A third Part to the King, a third Part to the Prosecutor, and a third Part to the Poor, &c. where he died. §. 50.
Burial.
- 3 Jac. 5. No Popish Recusant convict, shall present to any Ecclesiastical Living, Free-School, Hospital, or Donative, but be disabled; but the Chancellor and Scholars of Oxford to those in *Sussex*, &c. and the Chancellor and Scholars of Cambridge to those in *Essex*, &c. But they shall not present any to any Ecclesiastical Living, that hath another Living with Cure. §. 51.
Presentations.
- 3 Jac. 5. A Popish Recusant convicted at the Death of the Testator, or at granting Administration, is disabled to be Executor or Administrator, or to have the Custody of a Child, or be Guardian in Chivalry, So, §. 52.
Executors, &c.

- cage or Nurture, and the next of Kin, to whom the Estate cannot descend, that comes to Church usually, and received the Communion three Times that Year, before he shall be Guardian, &c.
- §. 53. *Jesuits.* Any Justice of Peace, within the County, in which any Jesuit, 37 El. 1. or Popish Priest, or other Ecclesiastical Person, shall arrive, or land within three Days after their Landing, may take their Submission Oath, and Acknowledgment touching their Obedience to the King's Majesty and his Laws, provided in Cases of Religion; but if it be any other Subject, who is no Priest, &c. and yet brought up in any Seminary, they must make their Submission, and take the Oath, &c. before two Justices, &c. See more in this Title.
- §. 54. *Discovery of Priests.* Every Subject knowing any Jesuit or Popish Priest, to be within 27 El. 2. the King's Dominions, ought to discover the same to some Justice of Peace, or other higher Officer, within twelve Days, &c. And such Justice of Peace, ought within eight and twenty Days, after such Discovery made to him, to give Information thereof to one of the King's Privy Council, &c. Upon Pain of Two hundred Marks, and upon such Information given by the Justice of Peace, he shall have redelivered to him a Note in Writing, subscribed by such Privy Counsellor, &c. with his own Hand, testifying, that such Information was made unto him.
- §. 55. *Superstitious Things.* If any Person to whom any *Agnus Dei*, Cross, Picture, Beads, or 13 El. 2. such superstitious Things shall be delivered or offered, do disclose such Deliverer or Offerer to any Justice of Peace, &c. That Justice of Peace, within fourteen Days, must declare the same to one of the King's Privy Council, or else he shall incur the Danger of a Premunire.
- §. 56. *Answer.* If any Person suspected to be a Jesuit, Seminary or Massing 35 El. 2. Priest, being examined by a Person having Authority so to do, shall refuse to answer directly whether he be so, shall by the Person examining him, be committed to Prison without Bail, till he answer directly.
- §. 57. *Discovery.* The Party that doth first discover to any Justice of Peace, any 3 Jac. 5. Recusant, or other Person, entertaining or relieving any Jesuit, Seminary or Popish Priest, or any Mass to have been said, or any of them that were present thereat, and the Priest that said the same, within three Days after the Offence: And by Reason of his Discovery any of the Offenders be taken and convicted, shall be freed from Danger of the Offence, if he be an Offender therein, and have the third Part of the Forfeiture which shall be forfeited by such Offence. 3 Jac. c. 4. if it exceed not 150*l.* or if above, he shall have 50*l.* and the Discoverer shall have a Warrant from the Sheriff or Officer that shall seize or levy the Forfeiture, to pay him out of the Money levied 50*l.*
- §. 58. *Books.* No Person shall bring from beyond the Seas, nor print, sell or 3 Jac. 4. buy, any Popish Primers, Ladies Psalters, Manuals, Rosaries, Catechisms, Missals, Breviaries, Portals, Legends, and Lives of Saints, 3 Jac. 5. containing Superstitious Matter in any Language, nor any Superstitious Books in *English*, upon Pain of 40*s.* for every Book. A third Part to the King, a third Part to the Prosecutor, a third Part to the Poor, where such Book shall be found, (not bound as in the Print) &c.
- §. 59. *Mass.* If any Person shall say or sing Mass, being thereof convicted shall 23 El. 1. forfeit Two hundred Marks, and be committed to the next Gaol for a Year, and from thenceforth till he hath paid the Two hundred Marks.

‘ Marks. And every Person who shall willingly hear Mass, shall forfeit 200 l. and suffer Imprisonment for a Year.

‘ Recusants confined to five Miles, may be licensed by any four Justices of Peace, with the Privy and Assent of the Bishop, or Lieutenant, or of any Deputy-Lieutenant, residing in the said County, under all their Hands and Seals, to travel about their necessary Business out of the Compass of five Miles. But such Licences must certify the particular Cause of the said Licence, and the Time of their Absence must therein be limited. And the Party so licensed, must first take his Oath before the said four Justices, or any of them, that he hath truly informed them of the Cause of his Journey, and that he shall not make any causeless Stays. See the Form of such Licence *hic postea*, Tit. *Precedents*. See more Tit. *Popish Recusants in the Appendix*, and a Licence otherwise is void, and going without such Licence, shall forfeit, as by 35 El. 2.

‘ 3. Jac. 5. In pleading a Licence, he must shew that he had taken the Oath

Moor's. Rep. 836. ‘ of Allegiance, and that the Cause of his Licence is true, and that it was granted with the Assent of the Bishop or Lieutenant, &c.

‘ And if the same Person be Justice and Lieutenant, that will not serve.

§ Jac. 5. ‘ A Woman being a Popish Recusant Convict (her Husband being not convicted) that shall not conform and remain conformed, which shall not go to Church, nor receive the Sacrament a Year before her Husbands Death, shall forfeit to the King two Parts of her Jointure, and two Parts of her Dower, in three Parts, to be divided, and be disabled to be Executrix, or Administratrix to her Husband.

30 Car. 2. c. 1. ‘ No Peer of this Realm, or Member of the House of Peers shall vote or make his Proxy in the House of Peers, or sit there during any Debate in the said House; nor any Member of the House of Commons shall vote or sit there after their Speaker chosen, till he first take the Oaths of Allegiance and Supremacy, and subscribe and repeat this Declaration between the Hours of nine in the Morning and four in the Afternoon, at the Tables in the middle of the said Houses, in a full House, viz.

I A. B. do solemnly and sincerely in the Presence of God, profess, testify and declare, That I do believe that in the Sacrament of the Lords Supper, there is not any Transubstantiation of the Elements of Bread and Wine, into the Body and Blood of Christ, at or after the Consecration thereof by any Person whatsoever; And that the Invocation or Adoration of the Virgin Mary, or any other Saint, and the Sacrifice of the Mass, as they are now used in the Church of Rome are superstitious and idolatrous: And I do solemnly in the Presence of God, profess, testify and declare, That I do make this Declaration, and every Part thereof, in the plain and ordinary Sense of the Words read unto me, as they are commonly understood by English Protestants, without any Evasion, Equivocation, or Mental Reservation whatsoever, and without any Dispensation already granted me for this Purpose by the Pope, or any other Authority or Person whatsoever, or without any Hope of any such Dispensation from any Person or Authority whatsoever, or without thinking that I am or can be acquitted before God or Man, or absolved of this Declaration, or any Part thereof, although the Pope, or any other Person or Persons

whatsoever, should dispense with, or annul the same, or declare that it was null and void from the Beginning.

King's
Presence.

Every Peer of this Realm, and Member of the House of Peers, and every Peer of Scotland or Ireland of twenty one Years of Age, or upwards, and every Member of the House of Commons, not having taken the said Oaths, and made and subscribed the said Declaration, and all Persons convict of Recusancy, that shall remain in the King's or Queen's Presence, or come into any House where they reside, shall incur and suffer the Penalties hereafter mentioned, unless such Person shall in the next Term after take the said Oaths, and make the said Declaration in the Court of Chancery, between the Hours of nine and twelve.

30 Car. 2.
cap. 1.

Popish Re-
cusants.
Disability.

Peers and Members of the House of Commons offending as aforesaid, shall be adjudged Popish Recusants convict, and be disabled to hold any Office in England or Ireland, or any Islands or Plantations to them helonging, or to sit in Parliament, or make a Proxy in the House of Peers, or to prosecute any Suit, to be Guardian, Executor or Administrator, or to take any Legacy or Deed of Gift, and for every Offence shall forfeit 500 l. to him that will sue for the same.

Ibid.

King's
Servants.

The King or Queen's sworn Servants shall take the Oaths, and make and subscribe the Declaration aforesaid in the Court of Chancery, in the next Term after they shall be sworn Servants, or in Case of Impediment by Sicknes, proved upon Oath, and allowed under the Hand of the Lord Chancellor or Keeper, then in the next Term after such Impediment removed. And if such Persons neglect to do the same, and yet come or remain in the Presence of any King or Queen of this Realm, or come into any House where they reside, they shall suffer all the Penalties and Disabilities aforesaid.

Ibid.

Queen's
Servants.

But this shall not extend to any natural born Subject of Portugal, who shall be the Queen's Servant, not exceeding nine at once; nor to the Queen's Women Servants nominated under her Hand and Seal; and not exceeding nine at once; nor to any Person who shall be licenced by Warrant of six Privy Counsellors, or by Order of Council, to come into the King or Queen's Presence, so as such Licence exceed not ten Days, and be filed in the Petty Bag.

Ibid.

Discharge
of Penal-
ties.

Offenders taking the said Oaths, and making the said Declaration after such Offence committed, shall from thenceforth be freed from all Penalties as Popish Recusants convicted as aforesaid, and from all Disabilities incurred thereby: But not to be restored to any Office supplied upon Voidance, nor to any other till after one Year after taking the said Oaths, and making the Declaration aforesaid, nor discharged of the said Forfeiture of 500 l.

Ibid.

Duke of
York.
Removing
of Papists.

Nor doth this Statute of 30 Car. 2. extend to the Duke of York. The Lord Mayor of the City of London, and every Justice of Peace of the City of London, Westminster and Borough of Southwark, and of the Counties of Middlesex, Surrey, Kent and Sussex, may cause to be arrested and brought before him every Person or Persons not being a Merchant-Foreigner within the same Cities, or within twelve Miles of the same as are, or are reputed to be Papists, and tender to them the Declaration mentioned in the Statute of 30 Car. 2. Entitled, *An Act for the more effectual preserving the King's Person and Government, by disabling Papists from sitting in either House of Parliament*; and if such Person upon Tender refuse audibly to repeat and subscribe the said Declaration, and shall after continue to be within the

Ibid.

1 Will. &
Mar. c. 9.

said Cities, or ten Miles Distance from the same, that the Offender shall forfeit and suffer as a Popish Recusant Convict.

1 Will. &
Mar. c. 9.

Every Justice of Peace shall certify every Subscription before him by Virtue of this Act taken; as also the Names of every Person refusing to repeat or subscribe as aforesaid upon Tender, under the Hand and Seal of the said Justice, into the King's Bench the next Term, or else at the next Quarter-Sessions: And if the Person refusing and certified shall not within the next Term or Sessions after such Refusal appear in the Court of King's Bench or Sessions, where such Certificate shall be returned, and in open Court repeat and subscribe the Declaration, as aforesaid, and indorse and enter his so doing upon the Certificate so returned, shall be from the Time of such his Refusal adjudged a Popish Recusant Convict.

Subscription
on certified

Ibid.

This Act shall not extend to any Person using any Trade or Mystery within the Liberties of London and Westminster, or within ten Miles of the same: Nor to such as within six Months before the thirteenth of February, 1688. had their Dwellings within the said Cities, or ten Miles Compass of the same, not having any Dwelling elsewhere, so as before the first of August, 18 9. he do certify his Name or Place of Abode at the Sessions of the Peace to be held for the said respective Cities or Counties.

To whom
this Act
extends.

1 Will. &
Mar. c. 18

23 Eliz.
29 Eliz.

1 Eliz.

3 Jac. 1.

25 Car. 2.

30 Car. 2.

1 Will. &
Mar.

By this Statute it is enacted, That neither the Statute of 23 Eliz. Entituled, *An Act to retain the Queen's Subjects in their due Obedience*: Nor the Statute of 29 Eliz. Entituled, *An Act for the more speedy and due Execution of certain Branches of the Statute made the twenty third Year of the Queen's Reign*: Nor that Branch or Clause of a Statute made 1 Eliz. Entituled, *An Act for the Uniformity of Common Prayer, and Service in the Church and Administration of the Sacraments*: Nor the Statute made 3 Jac. 1. Entituled, *An Act for the better discovering and repressing Popish Recusants*: Nor another Statute made the same Year, Entituled, *An Act to prevent and avoid Dangers which may grow by Popish Recusants*: Nor any other Statutes made against Papists or Popish Recusants; except the Statute made 25 Car. 2. Entituled, *An Act for preventing Dangers which may happen from Popish Recusants*: And except the Statute made 30 Car. 2. Entituled, *An Act for the more effectual preserving the King's Person and Government by disabling Papists from sitting in either House of Parliament*, shall be construed to any Person dissenting from the Church of England, that shall take the Oaths mentioned in a Statute made this present Parliament, Entituled, *An Act for the removing and preventing all Questions and Disputes concerning the assembling and sitting of this present Parliament*; and shall make and subscribe the Declaration mentioned in a Statute made 30 Car. 2. Entituled, *An Act to prevent Papists from sitting in either House of Parliament*; which Oaths and Declaration the Justices of Peace at their General Sessions, are hereby required to tender to such Persons as shall offer themselves to take and subscribe the same, and thereof to keep a Register: And no Person shall pay above 6 d. to any Officer of the said Court for entering the said Oaths, and subscribing the said Declaration: Nor above 6 d. for any Certificate signed by the Officer of the said Court.

Disfenters
exempted
from Po-
nalties.

Ibid.

All Persons convicted or prosecuted in Order to Conviction of Recusancy by Indictment, Information, &c. or otherwise grounded upon any the aforesaid Statutes, shall take the said Oaths mentioned in the said Statute made this present Parliament, and make and subscribe the

Do.

Persons exempted. Declaration aforesaid in the Court of Exchequer or Assizes, or at the General or Quarter-Sessions, and to be thence certified into the Exchequer, shall be from thence exempted from all Penalties and Forfeitures incurred by Force of any of the said Statutes, without any Composition or Charge whatsoever.

Any Person refusing to take the said Oaths when lawfully tendered, ^{1 Willi. & Mar} which every Justice of Peace hath Power to do, such Person shall not be admitted to make and subscribe the two Declarations in this Act mentioned, though required thereunto, either before any Justice of Peace, or at the General or Quarter-Sessions before or after any Conviction of Popish Recusancy, unless such Person can within thirty one Days after such Tender of the Declarations to him produce two sufficient Protestant Witnesses to testify upon Oath that they believe him to be a Protestant Dissenter, or a Certificate under the Hands of four Protestants conformable to the Church of England, or have taken the *Protestant Dissenters.* Oaths, or subscribed the Declarations above mentioned; and shall also produce a Certificate under the Hands and Seals of six or more sufficient Men of the Congregation to which he belongs, owning him for one of them. And that until such Certificate under the Hands and Seals of six of his Congregation as aforesaid, be produced, and two Protestant Witnesses to attest his being a Protestant Dissenter, or a Certificate under the Hands of four Protestants, as aforesaid, be produced, the Justice of Peace shall take a Recognizance with two Sureties in the penal Sum of 50*l.* to be levied of his Goods, &c. to the Use of the King and Queen for his producing the same; and if he cannot give such Security, to commit him to Prison, there to remain until he has produced such Certificate, or two Witnesses.

Private Meetings. No Congregation or Assembly for Religious Worship shall be permitted by this Act until such Place of Meeting shall be certified to the Bishop of the Diocese, or the Arch-Deacon of that Arch-Deaconry, or the Justices of Peace at the General or Quarter-Sessions of the Peace, and registred in the said Bishops or Arch-Deacons Court, or recorded at the said General or Quarter-Sessions, and registred by the Register or Clerk of the Peace, for certifying of which he shall not have above 6*d.* ^{Ibid.}

Two Justices may tender the Declaration, to suspected Persons. Two or more Justices who shall know, suspect or be informed that any Person is a Papist, are required to tender such Person the *Declaration made Anno 30 Car. 2. cap. 1.* against Transubstantiation; and if he refuse to repeat and subscribe it, or to appear before the Justices (a Summons being left at their usual Place of Abode, by one authorized under the Hands and Seals of the said two Justices) such Person shall be liable to all the Pains and Penalties, Forfeitures, and Disabilities, as follow. ^{1 Willi. cap. 15.}

And if he refuse to take and repeat it, shall keep no Arms, if he doth, they may be seized. § He or any other to his Use shall keep no Arms or Gunpowder, other than what shall be allowed him by the Quarter-Sessions for the Defence of himself or House; and any two Justices may by their Warrant empower any Person in the Day-Time, with the Assistance of the Constable or his Deputy or a Tythingman, to search for Arms in the Possession of such Papist, or reputed Papist, and seize the same to the King's Use, to be delivered at the next Quarter-Sessions for that Purpose.

Not delivering his Arms, or hindering the Seizure shall forfeit them, and be committed. A Papist refusing to subscribe the said Declaration, and not delivering within ten Days after such Refusal to some Justice, &c. all his Arms, &c. or who shall hinder any Person having Authority as aforesaid to seize, &c. shall be committed by two Justices to Goal for three Months without Bail, and shall forfeit the Arms, and treble the

Value, to the Use of the Crown, to be appraised by the Justices at the next Quarter-Sessions.

The Concealer or being privy to the Concealing such Arms, or knowing thereof, and not discovering to some Justice, or hindring any Person authorised to search or seize the same, shall be committed for three Months as aforesaid without Bail, and forfeit treble the Value of the Arms. Concealer of Arms shall be committed for three Months without Bail.

The Discoverer of concealed Arms, &c. so as the same may be seized, shall be allowed by the Quarter-Sessions a Sum of Money, amounting to the full Value of the Arms discovered, the same to be assessed by the Sessions, and to be levied by Distress and Sale of the Goods of the Offender. Discoverer of Arms shall have the full Value.

If such refuser shall desire to subscribe and conform, and shall at the Quarter-Sessions where his Refusal was certified in open Court, make and subscribe the said Declaration against Transubstantiation, he shall from thenceforth be discharged of all Disabilities and Forfeitures, &c. The Person conforming shall be discharged.

Such Refuser, &c. shall not keep a Horse above the Value of 5*l.* if he doth, two Justices may by Warrant give Power to any Person with the Assistance of the Constable, &c. to search for and seize all Horses above that Value, which shall be forfeited to the Use of the Crown, the Concealer or he who assists to conceal such Horses, shall by Warrant as aforesaid, be committed for three Months, and forfeit treble the Value of the Horses, to be settled by the Sessions. Refuser shall not keep a Horse above the Value of 5*l.*

1W c. 26. Every * *Papist convict* being disabled by the Statute 3 *Fac.* 1. c. 5. * See the Stat. 12 Ann. c. 14. to present to any *Benefice, School, Hospital, or Donative, or to grant any Avoidance thereof, 'tis now by the Statute 1 Willi. enacted that the *Refuser or he who neglects to make and subscribe the Declaration against Transubstantiation* when tendered to him by two Justices, or not appearing before them upon Notice, &c. and having his Name certified (as in that Statute is required) and recorded at the Quarter-Sessions, shall be disabled to present, collate or grant any Avoidance of any Benefice, as fully as if he was a *Popish Recusant convict*, and the University shall have the Right of Presentation to every such Benefice lying within their respective Limits, as appointed by that Act. Disabling to present to any Benefice.*

Trustees of Recusants disabled to present, &c. by the Statute 3 *Fac.* or by this Act 1 *Willi.* shall likewise be disabled, &c. and their Presentations, and grants shall be void, and the Universities, &c. shall present. Trustees are disabled.

Trustee, Mortgagee, or Grantee of any Avoidance who shall present to any Ecclesiastical living where the Trust, &c. shall be for any *Recusant* convict or disabled, without giving Notice of the Avoidance in writing to the Vice-Chancellor of the University to whom it belongs, within three Months after the Avoidance shall forfeit 500*l.* to such University, to be recovered by Action of Debt, &c. Trustee for a Recusant must give Notice to the University of the Avoidance.

If a Person disabled, &c. shall at the Quarter-Sessions make and subscribe the Declaration, &c. and take the Oaths appointed by 1 *Willi. cap. 8.* he shall be discharged from all Disabilities, &c. Person disabled and conforming shall be discharged.

11 & 12 W. c. 4. He who apprehends one, or more, *Popish Bishop, Priest, or Jesuit*, and prosecutes him so as he is convicted of saying Mass, or executing any other Parts of the Office of a Priest, shall within 4 Months after such Conviction receive of the Sheriff of the County 100*l.* upon Demand, for every Offender so convicted, he tendering a *Certificate* Apprehending a Popish Bishop, Priest, or Jesuit, shall after conviction, state how good.

cate of the Conviction under the Hand of the Judge or Justices before whom the Party was convicted, and that such popish Priest was taken by the Person claiming the said Reward; and the Judge shall by his Certificate direct in what Proportions the Reward shall be paid among the Persons claiming the same.

To be paid by the Sheriff or his Successor. The Sheriff dying, or being removed within 4 Months after Conviction, then the succeeding Sheriff shall pay the said Reward within 2 Months after a Demand, producing such Certificate as aforesaid, and if he makes Default in paying it, he shall forfeit to the Person to whom 'tis due the Sum of 200*l.* to be recovered by Action of Debt with full Costs; and the Sheriff producing the said Certificate, or the Duplicate thereof, shall be paid out of the Treasury.

Priests, &c. teaching School, &c. shall be imprisoned during Life. Popish Priest being convicted of saying Mass, or exercising any Part of his Office in the King's Dominions, or keeping School, or taking upon him the Education, Government, or Boarding of Youth, shall be adjudged to perpetual Imprisonment, in such Places within this Kingdom, as the King by Advice of his Council shall appoint.

Not to extend to a Priest of any Foreign Ministry. This Act shall not extend to a popish Priest, officiating in the dwelling House of any Foreign Minister residing here, if he is not a Subject of these Realms, and so as his Name and the Place of his Birth, and the Foreign Minister to whom he belongs, is entered in the Secretary's Office.

*Sending a Child beyond Sea, &c. forfeits 100*l.* to the Discoverer.* He who discovers and convicts another of sending a Child beyond Sea, to be educated in the Romish Religion, shall have the 100*l.* forfeited by the Person so sending such Child.

Popish Parent must allow fitting Maintenance for Protestant Child. And where a Popish Parent shall refuse a fitting Maintenance for a Protestant Child suitable to the Ability of the Parent, the Court of Chancery shall make such Order therein as shall be agreeable to the Intent of this Act.

Papists who shall not present to a Living. By the former Statutes, the Papists disabled to present to a Living, must be convicted of Recusancy, &c. but now by the Statute * 12 Annæ 14. *Anna*, 'tis enacted, That every Papist or Person professing that Religion, and every Child not being a Protestant (and under 21 Years old) of any Papist, and every Trustee or Mortgagee, or Person any ways entrusted by or for any Papist, shall be disabled to present to any Ecclesiastical Living, &c. and if he doth every such Presentation, and Admission, Institution, and Induction thereon shall be void, and the Universities respectively shall present.

The Ordinary must tender the Declaration to him who brings the Presentation. When the Presentation of a reputed Papist or of his Trustee, or of one who is suspected to be so, shall be brought to the Ordinary, he is required to tender such Person the Declaration against Transubstantiation, if present, and if absent, then the Ordinary shall by Notice in Writing appoint some Time and Place for the Person to appear before him or before some Person commissioned by him, and upon such Appearance shall tender the Declaration to him, and if he refuseth to make and subscribe it, or to appear upon Notice, &c. such Presentation shall be void, and the Ordinary shall, within 10 Days after, certify such Neglect or Refusal, under the Seal of his Office, to the Vice-Chancellor, &c. to whom such Presentation would belong, if the Patron was a popish Recusant, which shall be vested in the said University for that Turn only.

The

The Ordinary shall likewise examine the Presentee on Oath before he gives Institution whether the Person who presented him is the real Patron to the best of his Knowledge or Belief; or whether he made it in his own Right, or as Trustee for some other, and for whom, &c. and upon his Refusal to answer directly, the Presentation shall be void. And shall examine the Presentee on Oath.

The Universities and their Presentees or Clerks, may exhibit a Bill in Chancery; for the better Discovery of secret Trusts created by Papists against the Person presenting, and against such Persons whom they have Reason to suspect to be the Trustees of the Advowson, or against any other Person who may be able to discover the same; and if the Defendants shall not put in their Answer according to the Time allowed by the Court, the Bill shall be taken *pro confesso*, and may be given in Evidence against the Person neglecting to answer his Trustees and Clerks. The Universities, &c. may file a Bill to discover secret Trusts.

Provided that the Defendants having fully answered, and not knowing any such Trust, shall have Costs.

Where any *Quare Impedit* shall be depending, the Chancellor and Scholars of either University, or their Clerks, being Plaintiff or Defendant, the Court where 'tis depending, shall upon Motion make a Rule that the Patron and his Clerk who shall contest the Right with the University, shall give Satisfaction on Oath, being either examined in Court, or by Commission under the great Seal, or upon an Affidavit in Order to discover any secret Trust relating to the Presentation; and if upon such Examination, &c. it appears that the Patron is but a Trustee; then they shall discover who such Persons are, and where they dwell; and upon Refusal to make such Discovery, they shall be punished for a Contempt; and if such Patron or his Clerk discover such Person for whom he is Trustee, then the Court shall make a Rule upon a Motion that the Person for whom he is Trustee, shall in the said Court or before Commissioners, make and subscribe the Declaration against Transubstantiation, and give such farther Satisfaction on Oath, concerning the Trust, as the Court shall think fit, upon Pain of incurring a Contempt; and if he refuse to make the said Declaration, &c. he shall in respect of such Presentation, be taken to be a Popish Recusant convict. Where the Patron is a Trustee.

The Answer of such Patron and of him for whom he is Intrusted, and of his and their Clerks; and their Examinations and Affidavits as aforesaid, taken either by the Court or the Ordinary, shall be allowed as Evidence against the Person presenting and his Clerk. The Answer, &c. shall be allowed in Evidence.

No Discovery made by such Answer to a Bill exhibited, or to any Examination, shall subject the Person making the Discovery, or not answering, to any other Penalty, than the Loss of the Presentation. The Person discovering shall only lose the Presentation.

And no Lapse shall incur, or Plenarty be a Bar to any Bill exhibited as aforesaid, till after three Months after the Answer is put in, or the Bill taken *pro confesso*, or the Prosecution deserted, so as such Bill is exhibited before any Lapse incurred. No Lapse shall incur.

The *Quare Impedit* must be brought by the Chancellor and Scholars of, &c. or by their respective Names of Incorporation. Quare Impedit by the University.

Where a Trust is discovered, the Court may enforce the Producing the Deed. Where any Trust for a Papist is confessed or discovered by any such Answer or Examination, the Court where 'tis made may enforce the Producing the Deeds relating to the said Trust, by such Methods as they shall judge proper.

Papists not having taken the Oaths must register their Names, &c. Papists, or he whose Parent shall be a Papist, and having an Estate or Interest in any Lands, Tenements, &c. and not having taken the Oaths before the last Day of Trinity Term 1716. shall take the Oaths appointed by 1 Geo. cap. 13. and make and subscribe the Declaration against Transubstantiation in one of the Courts at Westminster, or at the Quarter-Sessions where such Lands or Part of them lie on or before 20 January 1716. and in Default thereof shall from Time to Time, within six Months after they, or any Trustees for them or for their Benefit, shall be in Possession of the Rents and Profits of any Lands, &c. register their Names, and all Lands, Tenements, &c. whereof they, or any in Trust for them, shall be in Possession, or receive the Rents and Profits; and shall express in such Register in what Parish or Place such Lands, &c. lie, and who are the Possessors thereof, and what Estate or Interest the Person registering hath therein, and if let, then for what Yearly Rent, and if let upon Lease, then by whom such Lease was made, what Rent reserved, and what Fine was paid for the same, if it was made by himself; or by any Person in Trust for him, or he was Party or Privy thereunto; all which he is to do in a Parchment Book, to be kept by the Clerk of the Peace in the County where the Lands lie.

Must subscribe his Name to the Register. The Person whose Estate is registred, must take care that his Name is subscribed to the Register, in the Presence of two or more Justices, either by himself or by any other whom he shall empower by a Warrant of Attorney, executed in the Presence of two or more Witnesses, who shall prove upon Oath at the Quarter-Sessions the Execution thereof; and 2 Justices then present, shall subscribe their Names as Witnesses to every such Entry, that the same was duly made on Pain of 20 l. and the Clerk of the Peace shall keep Parchment Books, or Rolls, and to make Entries therein upon Request of the Party desiring it, and delivering to him the Words in Writing which he desires to be registred 10 Days before the Quarter-Sessions, where the Entries are to be subscribed, and paying for such Registry 3 d. for every 200 Words, and no more, and the Clerk of the Peace shall keep alphabetical Tables of the Names of the Persons and Lands registred, and may take 4 d. for every Search for the Name or Estate of any Person.

Clerk of the Peace shall give Copies of the Registering. The Clerk of the Peace shall give Copies of such Registry subscribed by himself or Deputy, to any Person desiring the same, and tendering his Fees, and to examine the same for which he shall have 3 d. for every two Hundred Words, and if he neglect or refuse to do it, he shall forfeit his Office.

Neglecting to register, or fraudulently registering, forfeits the Inheritance of all Lands, &c. not registred. A Person required to take the Oaths and to subscribe the Declaration, or in Default thereof, to register his Name and Estate,

as aforesaid, and neglecting or refusing so to do, or fraudulently registering it, shall forfeit the Inheritance of all his Lands, &c. not registered or fraudulently registered; whereof he or she, or any Trustee for them were seized in Fee at that Time, and the full Value of all such Lands, &c. not registred or fraudulently registred, of which they were not seized in Fee, &c. Two Thirds to the Crown, the other Third to him (being a Protestant) who shall sue for the same; and the Person so suing in *Chancery*, may demand all such Discoveries as if he was a Purchaser, to which Bill no Demurrer shall be allowed, but the Defendant shall sufficiently answer it, and the Person suing for any such real Estate, may bring an Ejectment upon his own Demise, and give this Act in Evidence, together with the Special Matter; and if the Defendant shall not prove that he hath taken the Oaths, or registred his Name and Estate, a Verdict shall be given for the Lessor of the Plaintiff, with Judgment thereon, and full Costs; and one Third of the Lands recovered shall be vested in him, and the other two Thirds in the Crown.

The Person suing in Chancery may demand a Discovery as if he was a Purchaser, and no Demurrer shall be to the Bill.

Provido that a Purchaser *bona fide* for a valuable Consideration, or a * Mortgagee, not knowing the Default or Fraud in registering by the Seller, and before Conviction, or any Suit brought for the said forfeited Lands, shall not be prejudiced in his Estate or Interest therein, but the Defendant shall forfeit the Value of the Inheritance of such Lands, to be divided as aforesaid,

** Like Clause for a Mortgagee, and that the Offender shall forfeit the Value of the Incumbrance.*

None shall be obliged to register, until he or his Trustee shall be actually seized, or be possessed, &c. for six Months, and have Notice thereof.

He who registers must be actually seized or possessed for six Months.

And no Tenant at Rack-Rent, or who shall hold a Lease whereupon two Thirds of the full Value shall be reserved, shall be compelled to register.

Tenant at Rack-Rent, &c. shall not register.

3 Geo. cap. 18.

No Action shall be brought for not registering, &c. above two Years after the Offence committed.

Action for not registering must be brought within two Years, &c.

And where any Manors or other Lands or Farms lie in two or more Counties, the Registering shall be in the County where the Manor is, or where the House to the said Farm doth lie, taking Notice that the same doth extend to other Counties, and that, and no other, shall be a sufficient Registering.

Manors, Lands or Farms lying in two Counties.

No Sale of a Recusant's Lands to a Protestant Purchaser, or for his Benefit, shall be avoided, by Reason of any Disabilities or Incapacities in the Acts, 1 Jac. 1. or 11 & 12 Willi. incurred by the Seller, unless before such Sale the Person entitled to take Advantage of such Disabilities shall have recovered such Lands, &c. or have given Notice of his Title to such Purchaser, or have claimed the Lands before the Contract made for such Sale, &c. and have entered his Claim in open Court at the Quarter-Sessions where the Lands lie, and have *bona fide* with due Diligence pursued his Remedy to recover the same.

Sale of a Papist's Lands to a Protestant Purchaser shall not be void, &c.

The Clause in the Act 11 & 12 Willi. by which 'tis enacted, that after 10 April, 1700. every Papist shall be disabled to purchase any

Lands, and that all Purchases made to or for his Use, or upon Trust for him, should be void, shall remain in Force.

Leases made by Papists to Protestants shall be good without Enrollment.

By the Act 3 Geo. cap. 18. no Papist is to alien Lands by Deed or Will, except enrolled within six Months; but in Order to relieve Protestant Lessees, and Persons who have neglected to enroll their Deeds and Wills within that Time, 'tis enacted that every Deed and Will made by any Papist, or reputed Papist, since the Year 1717, to pass away any Lands &c. shall be good in Law, tho' not enrolled within six Months, so as 'tis enrolled by the 29th of September, 1724. And all Leases made by Papists, &c. to Protestants, shall be good without Enrollment, whereon the full yearly Value, or the antient or most accustomed yearly Rent or more is reserved.

C H A P. LXXXII. *Vide* XLVI.

Riots, Routs. See postea. Chap. 183.

§. 1. One Justice preventing.

ANY one Justice of Peace alone, may use Means to prevent a Riot or Rout before it be done, and to stay it whilst it is in Doing, and may take and imprison the Rioters, or bind them to their Good Behaviour. But being once done, and committed, one Justice of Peace cannot make Enquiry thereof, nor assess any Fine, nor award any Process, nor otherwise punish it in the Nature of a Riot or a Rout, but only as a Trespass against the Peace, or upon the Statutes of Northampton, or of Forcible Entries; whereof see the Title *Forcible Entry*.

And yet, if one Justice of Peace, sitting in a judicial Place (as in the Sessions) shall see a Riot, he may command them to be arrested, and may make a Record thereof, and the Offenders shall be concluded thereby: But if one Justice of Peace shall see a Riot in another Place, and shall command them to be arrested, and shall make a Record thereof, the Offenders shall not be concluded thereby, but may traverse it: And yet the Justice may record it, and certify the same to the next Sessions, &c. Cro. 41.

If a Justice of Peace will commit a Man, pretending untruly that he did a Riot, where he did none, the Party may have an Action of Trespass against him, *Fitz. Just. 9. tamen vide Co. 8. fol. 121. a.* That the Record of a Force made by a Justice of Peace is not traversable, for that he doth it as a Judge; and so the Justices Record of a Riot, is not traversable. See *hic postea*; also see *Br. Judges 2. §. 10.* That an Action will not lie against a Justice or Judge of Record, & 2. R. 3. 10. *hic. c. 120. scil. pro refacta judicialiter.*

§. 2. Forfeiture.

Every Justice of Peace (being of and in the County, and having Notice of any Riot, Rout, or unlawful Assembly) ought to have a Care of the Execution of the Statute made 13 H. 4. c. 7. (*viz.* that the Rioters, &c. be arrested and removed) for if that Statute be not executed in every Part thereof, by some of the Justices, the two next Justices of Peace shall forfeit each of them 100 l. and every other Justice of Peace within that County, in whom there shall be any Default, shall be finable.

And

14H.79.b And therefore every Justice of Peace of the County, hearing of any Rout, or of any Intention of a Riot (without making any Precept, or tarrying for his Fellow Justice, or for the Sheriff) shall do well to go himself (if he be able) with his Servants, or other Power of the County, (if need be) to the Place where such Persons be assembled, and to suppress them, and all such as he shall find and see riotously assembled, (and armed) to arrest them, and to force them to put in Surety for the Peace, or for their Good Behaviour: And for refusing to give such Surety, or in Default of Surety, to imprison them. And also he may take away their Weapons and Armor, and seize and prize them for the King. *Vide Tit. Armor and Forcible Entry.*

Lam.185.
Br.Peace.
7.
Lamb.79.
124.

So that one Justice of Peace seeing a Riot, may and ought to record it, and to attach the Rioters, and to commit them, or bind them over to the Good Behaviour; but he may proceed no further therein. For he cannot *Fine* them without *Enquiry*, which Enquiry must be by *Fine* a *Jury*, and before two Justices of Peace, at any Time within the Month. Otherwise, for omitting of attaching or arresting the Offenders at the first, the Justice who saw the Riot is punishable: But the Enquiry by a Jury must be within one Month, *sub pana* 100 *l.* to the two next Justices, &c. See *hic postea.*

14H.7.10.
Br.Peace.
7.

And if the Justices (being come to the Place) shall not find the Rioters there, he may leave his Servant with his Warrant in Writing, or without Warrant, to restrain them, or else to arrest such Offenders when they shall come, if they shall offer to commit any Riot, or to break the Peace.

So if the Justice be sick, and shall hear of a Riot, he may send his Servants, or other Power of the County, if need be, (with his Warrant under his Hand and Seal, or without such Warrant, by Word of Mouth) to the Place to repress it, or to arrest such Offenders, and to bring them before him, to find Sureties for the Peace. And all this he may do without expecting the Coming of any his Fellow Justices, or of the Sheriff, or Under-Sheriff.

14H.7.10.
Br.Peace.
7.

Also any one Justice of Peace (by the first *Assignatus* in the Commission) may cause to be kept and put in Execution, all other Statutes made for the repressing Riots, Force and Violence: But therein he must pursue the Form and Order in such Statutes prescribed.

13H.4.c.
7.P.5.

But the ordinary Power of punishing Riots belongeth unto two Justices of Peace at least; and therefore the two next Justices of Peace who dwell nearest in the County, where any Riot, Assembly or Rout of People shall be against the Law, together with the Sheriff or Under-Sheriff of the County, upon Complaint or other Notice of the Riot, shall execute the Statute 13 H. 4. 7. (*sc.* all and every Part thereof respectively, as to them is appointed) every one of them, upon Pain of 100 *l.* And in Default of the two next Justices, the other Justices of Peace of and within the County (upon Notice of such Riot) ought to do Execution thereof, every one upon Danger to be fined: But the Penalty of 100 *l.* is only to be laid upon the two next Justices.

Crompt.
63.

Lam.322.

See the Case of *Drayton Bassett*, *hic antea*, *Tit. Forcible Entry*; where certain Justices of Peace, who did not dwell nearest to the Place where the Riot was committed, yet were fined upon the Statute 17 R. 2. c. 8. But that Riot was notorious, for there were a great Number assembled in the Manor-House of *Drayton Bassett*, who did detain the same forcibly.

And

§. 6. *Ex Officio.* And therefore if the Riot, &c. be great and notorious, whereof by Dyer^{210.} common Intendment every Person may take Knowledge, it is not safe for the Justice or Sheriff, &c. to expect and stay till Complaint thereof shall be made unto them, or that they shall have Information or Notice given them thereof, lest they incur thereby the said Penalty of 100 l.

If any one other of the Justices of the Peace of the County (besides those two which are next) shall execute this Statute, that shall excuse the two next Justices, for that the Statute giveth Power herein to all Justices.

§. 7. *Sheriff.* If one, or the two next Justices shall come, and not the Sheriff or P. R.³⁰¹ Under-Sheriff, such Justices who come, shall be excused of the Forfeiture of 100 l. but yet if there comes but one Justice of Peace, he ought to arrest the Rioters, and to remove the Force, and commit or bind over the Rioters; otherwise he is finable, &c.

And if there shall be two Justices present, and neither the Sheriff^{Lam. 311.} nor Under-Sheriff; yet those two Justices are finable, if they shall not do all which (without the Sheriff or Under-Sheriff) they are authorized to do by the Statute.

But no Justice of Peace who dwelleth in another County is bound^{Lam. 311.} upon the said Penalty of 100 l. to execute the said Statute of 13 H. 4. although he dwelleth next to the Place where the Riot is, and although he be in Commission of the Peace for the County where the Riot is: For the Words of the Statute are, *The Justices which dwell P. 3. nearest in every County where the Riot shall be*, and not which dwell nearest to the Place where the Riot shall be; and yet it is safe, that such Justice dwelling out of the County, upon Notice of such Riot do come into the County, and do his Endeavour to suppress the same Riot, and to execute the Statute, for that he is one of the Justices of the County.

If the Sheriff or Under-Sheriff do not come, the Justices ought to send for them, as Mr. Marrow thinketh.

And some are of Opinion, that if the Sheriff or Under-Sheriff shall P. R.³⁰¹ not come to the Justices, being sent for to assist them, that then all the Justices of Peace dwelling near or remote, shall be excused of the same Penalty of 100 l. or of any other Penalty or Fine; for that the said Statute giveth the Sheriff or Under-Sheriff equal Authority, and, as it were, join him in Commission in the Copulative with the Justices of Peace. But others are of another Opinion, viz. That if the Sheriff or Under-Sheriff shall not come, yet the Justices of Peace^{Lam. 32. Cromp. 63} shall be fined if they come not, and arrest the Rioters, and do not moreover proceed to do therein that which (without the Sheriff or Under-Sheriff) they are in any Way authorized to perform.

§. 8. *What the Justices may do without the Sheriff.* Now what the Justices of Peace may or ought to do therein (by 13 H. 4. 7.) Force of this Statute of 13 H. 4. 7.) without, or in the Absence of the Sheriff and Under-Sheriff, is worthy Consideration, as being needful for the Justices of Peace to know, and safe for them to perform, as well for the speedy preventing of such present Mischiefs as may happen by such dangerous Assemblies, as also for their Saving the Penalty of the Law.

But herein I dare not determine, finding that others (of good^{Lam. 319.} Judgment and Experience) who have written hereof, have seemed to^{322.} doubt.

And yet there is no Doubt, but that the Justices of Peace (without the Sheriff or Under-Sheriff) upon all Riots, may and ought first to go to the Place, and such Rioters as they shall see or find riotously assembled, they may and ought to arrest, and to take away their Armour and Weapons, and to remove and *commit the Rioters*, or may cause them to *find Sureties for the Peace or Good Behaviour*; and for want of such Sureties, may *commit them to the Gaol*. All which, any one Justice of Peace may do.

P. Riots 2. Also two Justices of Peace after the Riot committed (without the Sheriff or Under-Sheriff) may and ought to enquire of the Riot; and *Enquiry* if upon such Enquiry the Riot be found, the said Justices may *fine* and *imprison* the Offenders, as hereafter appeareth.

But whether two Justices of Peace *seeing a Riot*, may record the same upon their own View, without the Sheriff or Under-Sheriff, and thereupon (without any Enquiry) may *fine* them for the same, and may commit them to Prison till they have paid the same Fine, is to be considered. I know the common Opinion to be, that they cannot record the Riot (*without the Sheriff, or Under-Sheriff*) for, say they (by the Statute) the Sheriff or Under-Sheriff are associated to the Justices of Peace, and have equal Authority with them therein; and then consequently the Justices of Peace alone upon their own View, without Enquiry, can neither fine them, nor imprison them for their Fine.

14 H. 7. 9. Yet *Fineux*, Chief Justice, saith, that this * Statute of 13 H. 4. *M. Lamb. thinketh it to be the Statute of 34 E. 3. 1 that Fineux meant, whether than the Statute of 13 H. 4.* was made for the common Profit of the Realm, and for a hasty Remedy, and to avoid a present Mischief like to happen; and therefore shall be construed largely for the common Good, and in Furtherance and Advancement of Expedition of Justice.

21 P. 6. f. 5. Also we see, that any one Justice of Peace may do all these Things, in Case of a *Forcible Entry*, *sc.* he may come with the *Power of the County*, if Need be, and may arrest the Offenders, and may *record the Force by him viewed*: And this Record shall be a sufficient Conviction, so that he may thereupon commit the Offenders to the Gaol, and may *fine* them.

P. 1. Also this Statute of 13 H. 4. doth relate to the said Statute of Forcible Entries, 8 H. 6. touching the Conviction of Offenders by the Record of the Justices.

Fitz. Just. 9. 17. Also by some good Authority, if two Justices of Peace (without the Sheriff) shall see a Riot, they may arrest them and make a Record thereof, and the Offenders shall be concluded by such Record, for that *14 H. 7. 8.* the *View of the Riot is not to be traversed.* *Lamb. 313.*

Crompt. 65. 196. Also the Statute of 34 E. 3. 1. enables two Justices of Peace to imprison and fine Rioters, and that *without Enquiry*, and then consequently, it seemeth they are to make a Record of the Riot. See *P. Just. 11. 34 Ed. 3. cap. 1.* *Lamb. 291, 292. Ideo Quere.*

And yet *Quere*, whether two Justices of Peace (upon the Statute of 13 H. 4. 7.) without the Sheriff, may not, nay ought not, upon the Penalty of 100*l.* upon their View of a Riot, record the Riot, and without Enquiry fine the Offenders, and imprison them till they have paid their Fine (as Convict by their View and Record) though this may seem to be more for the King's Advantage, rather than to hazard the Fine upon finding it by Enquiry. 'But it rather seemeth, that the Justices upon their own View of a Riot, may record it, and commit the Offenders, and then to certify or send

• send the Record into the *King's Bench*, where the Offenders shall be fined. And this I take to be more warrantable, and safer for the Justices, if they shall not enquire thereof.

§. 10. And now to the Particulars of that which the *two next Justices*, with the *Sheriff or Under-Sheriff*, must do in Execution of this Statute of 13 H. 4. 7. every one upon Pain of 100 l.

1. First, they shall go to the Place in *Person*, if they be able, where the Riot, &c. shall be.

And they shall take the *Power of the County* (if need be) *sc.* they shall have the Aid of all Knights, and other temporal Persons under that Degree; that be *above the Age of fifteen Years*, and be able to travel: For all the King's Subjects that are in the County where a Riot, &c. shall be, being able to travel, must be aiding and assistant to the Justices of Peace, Sheriff, or Under-Sheriff, (or other Commissioners) when they shall be reasonably warned to ride or go with the said Justices and the Sheriff, &c. in Aid to resist such Riots, &c. upon Pain of *Imprisonment*, and to make *Fine* and Ransom to the King;

which * Ransom shall be treble so much at the least as the Fine, *sc.* Ransom, *sc.* Dyer 232. Yet by others, by Ransom, is intended, that the Party is to make his Agreement with the King, *Ad verum valorem omnium bonorum suorum mobilium.*

But Sir Edward Coke, L. 127. saith, that in legal Understanding, a Fine and Ransom are all one.

But it is referred to the Discretion of these Justices, how many, or few, they will have to attend them in these Businesses; and in what Sort they shall be armed, weaponed, or otherwise furnished for it.

§. 11. Again, it is not good for the Justices to assemble the *Power of the County*, without certain Information, or Knowledge of such riotous Assembly; yet if upon false Information of a Riot to be at such a Place, the Justices shall cause the *Power of the County* to be assembled, the Justices shall be excused by Reason of the Information; and if without Information, the Justices shall think that such a riotous Assembly is made in such a Place, and shall assemble the *Power of the County* to go thither and arrest the Rioters, and when they come to the Place they find a Riot there indeed, they must arrest and imprison the Offenders, and shall be excused of the Assembly made by them: But if they shall find no Riot there, then shall they be punished for making such an Assembly of their own Heads, without Information.

§. 12. 2. All such Offenders as they shall find there present, they shall arrest them, or cause them to be arrested, and shall remove the Force *sc.* shall commit to prison all the Rioters, and take away their Weapons.

Also all such as came in Company with such Rioters, or in the Company of any of them, if the Justices shall find them there present, though they do nothing, and though they came without any Intent to commit any Riot, yet they shall be arrested, imprisoned and fined. See to this Purpose in the Title *Forcible Entry*.

Also all such Rioters as the Justices shall meet in their Way (riotously arrayed, and coming from the Place) they may arrest and imprison them, for that they found them unlawfully assembled; but they cannot record any Riot by them done, for that they *saw it not*, yet they must afterward enquire thereof by a *Fury*, that so the Offenders may be fined, &c. See more in this Title.

But if the Justices do *see the Riot committed*, and after the said § 13.
 Rioters shall escape at that Time, yet the said Justices shall record *Record.*
 it; but they cannot arrest them at any other Time, except it be pre-
 sently after, and in fresh Suit; neither can they fine the Offenders,
 nor award any Process against them upon that Record which they shall
 make; and yet for that they saw the Riot (and these Rioters that be
 escaped, committing the Riot) they shall record it. But that Re-
 cord shall not be kept amongst the Records of the Peace, but the
 said Justices shall send the said Record to the *King's Bench*, that
 Process may from thence be made upon it, against those Rioters that
 escaped; where also the said Offenders shall not be admitted to any
Lam. 312. *Traverse*, but must of Necessity make Fine for their said Offences.

If after the Justices and Sheriff shall *see the Riot*, the said Rioters § 14.
 shall escape, and the Justices and Sheriff shall record the same Riot, *Escape.*
 and then one of the Justices be put out of the Commission, or the
 Sheriff, or one of the Justices shall happen to die, yet shall that Re-
 cord be sent or certified into the *King's Bench*, by the other Justice
 and Sheriff. *Lamb. 320.*

But if (after the Inquiry, and before the Certificate) the Sheriff, or § 15.
 the Justices shall die, or be put out of the Commission, or that their *Certificate.*
 Authority doth cease by the Death of the King, or otherwise, such
 Record cannot be certified without the King's Writ of *Certiorari. Br.*
Record. 17. 64. and Lamb. 320.

Also such Offenders, as the Justices saw committing the Riot, tho' § 16.
 they shall escape from the Justices, yet the said Justices may after *Good Be-*
 grant out their Warrants for them, and send them to the Gaol, till *haviour.*
 they shall find Surety for their Good Behaviour.

If such Offenders shall depart before the Coming of the Justices,
 yet (upon certain Information of their being there) the said Justices
 may also grant out their Warrants for them, and may commit
 them, till they found Sureties for their Good Behaviour: Or rather
 the Justices shall do well to proceed against them, by *Inquiry*, and so
 to *fine* the Offenders for the King, &c. See more in this Title.

Also in the Execution of this Arrest of the Rioters, the said Justi- § 16.
 ces, &c. may justify the *Beating, Wounding, or Killing* of any of the *Resistance.*
 Rioters that shall resist them, or that will not yield themselves to
 them. *Vide Tit. Homicide, bis.*

Also the said Justices may take from such Rioters, their Armor and *Armor.*
 Weapons, and shall cause the same to be prized and answered to the
 King, as forfeited.

3. After the Arrest made, the said Justices and Sheriff or Under- § 17.
 Sheriff, shall make a Record in Writing of the said Riot (*scil.* of all *Record.*
 that which they shall see, and find done in their Presence against the
 Law) without any other *Inquiry*: And that their Record is a suffi-
 cient Conviction of the Offenders.

If two Justices of Peace shall *see any Making a Riot*, they may *View.*
 command others to arrest the Rioters, and then make their Record
 thereof, and the Offenders shall be concluded thereby. *Fitz. Just. of*
Peace, fol. 17.

But if the Justices of Peace do not themselves *see the Riot*, they
 cannot make a Record thereof; but then they must *inquire thereof.*

If the Justices of Peace, &c. going to see a Riot, another Riot
 shall happen in their Presence; they may record this, and arrest and
 imprison the Offenders.

Other Riot. So if the Rioters shall make a Riot upon the Justices (and Sheriff) that do come to arrest them for their former Riot; they may record that also.

So if two Justices of Peace (and the Sheriff or Under-Sheriff) shall meet for any other Cause, or for any private Business (as upon an Arbitrament, or other like Matter,) and a Riot shall happen to be done upon themselves, or in their Sight; they may record it, and may arrest and imprison the Offenders.

Conclusion. And if the Justices of Peace shall record a Riot; and upon Examination of the Matter after, it shall appear to be no Riot; or that they saw it not; or that there was no Riot at all; yet the Parties shall be concluded thereby, and have no Remedy, and therefore the Justices shall do well to be advised what they record. See 9 H. 6. f. 60. Br. Judges 2. Fitz. Just. of P. f. 17. 9 H. 6. fol. 60. Crompt. 63, 65.

And again, for that this Record of the Justices and Sheriff; is a sufficient Conviction in it self against the Offenders; therefore it ought to be formal and certain as well for the Time and Place, as also for the Number, Weapons, Manner, and other Circumstances, because the Parties be concluded thereby, and shall not be received to Traverse; or deny it in any Point. Lam. 311.

The Form of the Record *vide hic postea.*

This Record ought to remain with one of the said Justices of Peace; and shall not be left amongst the Records of the Sessions of the Peace, it being made out of the Sessions; and not appointed to be certified thither. Lam. 312. & 365. 375.

§. 18. *Imprisonment. Gaol.* 4. Also the said Justice of Peace (and none other) shall commit such Offenders to the Gaol, their to remain convicted by their View, Testimony and Record, (as in Case of Forcible Entry) until they have paid a Fine unto the King. P. 1. 11. Lam. 312.

Also such Commitment of the Offenders to the Gaol ought to be done presently. Co. 8. 120.

And the Power of the County ought to be aiding to the Sheriff or Under-Sheriff, for the Conveying of them to the Gaol. Lam. 310.

If the Justices of Peace, and Sheriff or Under-Sheriff, shall record the Riot, and shall not presently commit the Rioters to Prison; or if they shall commit them to Prison, and shall not record the Riot, they shall forfeit every of them 100 l. by the Statute of 13 H. 4. for that they have not done Execution of the same Statute: For by the Statutes they shall record and commit; and again, by the same Statutes, the Offenders must be as well imprisoned as fined. Crompt. 61. P. Forces. P. Riots 1.

§. 19. *Fine.* 5. Also the said Justices of Peace (and none other) shall assess the Fines upon the said Offenders; for they have best Knowledge of the Matter, &c. Co. 8. 40. a. Which Fines by the Stat. of 2 H. 5. 8. ought to be of good Value, that out thereof the Charges of the said Justices and other Officers may be born, *sc.* their Charges in going, tarrying and returning, &c. about the Suppressing and Inquiry of such Riots; of which Charges Payment shall be made by the Sheriff, by Indenture thereof made between him and the said Justices. Lam. 312. 557. Cro. p. 10.

Fines. And yet such Fines must be reasonable and just, and *Secundum quantitatem & qualitatem delicti*, and not unreasonable and excessive (for *excessus in re qualibet jure reprobatur communi*, Co. 11. 44.) And so it is commanded by the Statutes 9 H. 3. 14. 3 E. 1. 6. 18 E. 3. 2. and 34 E. 3. 1. P. Just. 1. & 18.

And the Reasonableness of the Fine shall be adjudged by the Discretion of the same Justice of Peace. *Co. 11. L. 56. b.*

Note also, that the Fine assessed in this, and such like Cases, must not be imposed upon all the Offenders *jointly*, but must be assessed upon every Offender *severally*. *Co. 11. 43, 44.*

And yet note, that in some Cases a Fine or an Amercement shall be imposed upon *divers jointly*; (*sc.* sometimes upon a *whole County*, sometimes upon a *Hundred*, and sometimes upon a *Town*, as for an Escape of a Murderer, &c. whereof see *hic post.*) but that is by Reason of the Incertainty of the Persons, and for the Infiniteness of their Number. *Co. 11. 43.*

And the said Justice shall cause the said Fine to be estreated into the *Exchequer*, that so the said Fines may be levied to the King's Use; *§. 20. Estreats.* and then they are to deliver the Offenders again: Or else the said Justices may record such Riot by them viewed, and commit the Offenders, and after certify the Record to the Assizes or Sessions, or into the *King's Bench*, as in Case of Forcible Entry.

13 H. 4. 7. *P. 2.* 6. But if the Riot was not committed in the *Presence of the said Justice*; or that the Offenders be *departed before the Coming of the said Justices, and Sheriff or Under-Sheriff*, then the said Justices, or two of them at the least, *within one Month*, immediately after such Riot, Assembly, or Rout, shall *inquire* thereof by the Oaths of a sufficient *Jury* to be returned by the Sheriff, ('who shall return upon every Person so by him impanelled in Issues at the first Day 20 s. at the second 40 s.') and the same Riot, &c. being found by such Inquisition, the Justices must make or cause to be made a Record in Writing, of such their Inquiry or Presentment found before them; which Record also is to remain with one of the said Justices. *P. R. 29.* See the Form thereof, *hic*. *§. 21. Inquirers.*

The Form of a Precept to be made by the Justices to the Sheriff, to return a Jury, &c. *Vide hic postea.*

The Form of such Inquiry or Presentment. See also the Title *Precedents, hic postea.*

Crompt. 62. This *Inquiry* shall not be, but where the *Rioters are gone* before the Coming of the Justices; 'or where they had *not the View of the Riot*.

It is not necessary that one of the Justices of Peace (which shall make Inquiry of a Riot) be of the *Quorum*.

Lam. § 16. Although the Words of the Statute are, the same Justices (*sc.* which came to see the Riot) shall inquire; yet if any other two Justices of Peace of that County shall do it, that will suffice.

Also the Justices of Peace although they go not to see the Riot, yet they may *inquire* thereof *within the Month* after.

Lam. § 17. Neither is it of such Necessity, to have the Inquiry within the Month, *Time* that for Default thereof the Presentment shall be void; for the Justices of Peace may inquire thereof at any Time by Force of their Commission; but if it be not within the Month, then every of the two next Justices are in Danger to lose 100 l. for it. And yet if these Justices do charge the Jury within the Month, and do give Day unto them to yield their Verdict and Presentment after the Month, the Statute is not offended.

But yet it seemeth that the Justices of the Peace are not bound upon the Penalty of 100 l. to inquire *within the Month* of all *Petty Riots*, but only of such Riots as are *notorious and dangerous*, and in the Nature of *Insurrections or Rebellions*.

§. 22. *Sheriff.* At this Inquiry, the Sheriff or Under-Sheriff ought to be present with the Justices of Peace, as Ministers only for the Returning the Jury, and be not herein associated with the Justices, as they were before in arresting the Rioters, and recording their Disorder: But by their Presence, they may help to espy the Evil; and besides, it addeth Force and Credit to the Certificate. Lam. 316, 318.

§. 23. *Ex Officio.* If the Justices do assemble themselves, the Sheriff and the Jury, to make Inquiry of a Riot within the Month, and the Parties be agreed amongst themselves; so as none will sollicite the Inquiry, nor give in Evidence for the King upon that Riot, yet ought the Justices to proceed (*Ex Officio*) to make Inquiry of that Riot, seeing it may be that some of the Jury may have Knowledge of it. Lam. 317. Cromp. 62. p. 29.

Evidence. And also the Justices ought to make Proclamation, That if any Man will give Evidence for the King concerning that Riot, or (generally) will inform the King's Justices of any Riots, Routs, &c. And thereupon some other Persons may perhaps come forth to inform him therein. P. R. 29. Cromp. 62.

But if (at the Party's Request) the Justices shall dismiss the Jury without Inquiry, they are finable.

And if the Justices shall not proceed herein (*Ex Officio*) without some Evidence for the King. *Quare*, if they shall not be hereby in Danger to lose the hundred Pounds upon this Statute, for the Reasons abovesaid.

Complaints without Cause. And it seemeth, that the Justices of Peace may justly bind to their Good Behaviour, the Parties that first complained to them of this Riot, and have caused them to meet, and now will not prosecute the same for the King, but have agreed it.

§. 24. *Hear and determine.* After such Inquiry had, and the Truth of the Riot found, the said Justices have Authority (by the said Statute) to hear and determine the same according to the Law, viz. They may make out their Warrant or Process, (*sc.* a *Venire facias*) against the Offenders under their own *Teste* (thereby to cause the Offenders to come in and answer) and upon their Appearance the said Justices may assess the Fine, and may commit them to Prison till they have paid it, and may deliver them after Payment, or upon Sureties taken for it (which Sureties ought to be bound by Recognizance;) or otherwise they may receive their Traverse, and thereupon (if the Matter will so serve) to discharge and dismiss them: But then the said Justices shall do well to send such Indictment or Inquisition found (and such Traverse) to the next Quarter-Sessions, or into the *King's Bench*, and there the Traverse shall be tried and determined according to Law. *P. R.* 30. 13 H. 4. c. 7. p. 2. Lam. 317.

§. 25. *Removal.* Note, that all *Indictments*, *Inquisitions* or *Presentments*, taken and found before *Justices of Peace*, of any Riot, *Forcible Entry*, or other Thing against the Peace, may be delivered into the *King's Bench*, by the Hands of the same Justices of Peace, before whom the same was found, or otherwise may be removed from the said Justices of Peace, before the Justices of the *King's Bench*, by a *Certiorari*: In both which Cases the Justices of the *King's Bench* may proceed to hear and determine the same. Br. Imp. 100. Lam.

Now by the Statute made 2 H. 5. c. 8. the King is to bear the Charges of the Justices of Peace, which shall execute the Statute of Riots. And therefore, 2 H. 5. cap. 8.

§. 26. *Charges.* Concerning the Fine so assessed by the Justices of Peace, they may thereout pay the Charges of the said Justices, and of the Jury (who made the Inquiry, and by whom the Riot was found) *sc.* For their

Diet,

Diet, and the Sheriff's Fees, &c. And then they may bring the Record of this Inquiry to the next Quarter-Sessions, and there deliver the same to the Clerk of the Peace, together with the Residue of the Money remaining of the Fine, &c.

Also the Clerk of the Justice who maketh up the Record of this Inquiry, may have his Fees out of that Money; or else he may take of every Offender twelve Pence, when they have paid their Fine: For so the Clerks of the Peace use to do.

Or rather the said Justices are to be paid their Charges by the Sheriff, by Indentures made between him and the said Justices; whereof the Sheriff, upon his Account in the *Exchequer*, may have due Allowance. 2 H. 5. cap. 8. The Justices Charges

But when Men are indicted for Riots (or the like) they will usually yield themselves, and pray to be admitted to their Fine (in which Case the Justices of Peace commonly do assess but some small Sum or Fine) and upon the Payment thereof, do discharge the Offender; and hereby the Offenders are not imprisoned, (which would work more for Fear in such Offenders, than such Fine) and therefore it is behoveful for the Justices of Peace to use good Care and Discretion herein; for by the Statute 2 H. 5. c. 8. the Offenders are as well to be *imprisoned as fined*, and this is much more serviceable, and more agreeing with the Intent of the Law. Besides, this Fine is called in divers Places § 27. Fine.

Lam. 559. the Intent of the Law. Besides, this Fine is called in divers Places
 * Marlb. in the * old Statute, (*Ransom*, or *Redemptio* in *Latin*) and seemeth Ransom, what.
 c. 1, 2, 3, 4 by the Propriety of this Word to imply, That the Offenders ought first to be imprisoned, and then to be ransomed, and delivered in Consideration of this Fine. ' To which Purpose see Mr. *Horne* in his *Mir. of Just.* 1. 3. where he sheweth that Ransom is the Redemption of a corporal Punishment due by Law to any Offence.

And the Justices of Peace are enjoined by the Statute (2 H. 5. c. 8.) to put in greater Sums in these Fines than they were wont in such Cases, for the bearing of the Charges of the Justices and other Officers, &c. as is before said.

At the Common Law, a *Riot* was punishable as a *Trespass*, and as well the *Fine*, as the *Imprisonment* were at the Discretion of the Judges; and in the same Manner the Statute of 13 H. 4. enabled the Justice of Peace to punish such Offenders. But now as well the Imprisonment, as the Fine of such Offenders are to be increased by the said Statute 2 H. 5. c. 8.

Crom. 63. And therefore where the Justices of Peace are remiss herein (scil. P. R. 34. in not sufficiently punishing such Offenders by due *Fine and Imprisonment*) the Lords in the * *Star-Chamber*, have often assessed upon Rioters for the same Riot (for which the Justices of Peace have formerly assessed a Fine in the Country) a greater Penalty, if they see Cause: And yet in this Case the Offenders are not twice punished for one Offence, but that one Part of the due Punishment is inflicted at one Time, and Part at another. * The Court of King's Bench hath the same Power, the other Courts being abolished.

13 H. 4. 7. So lastly, if the Truth of a Riot cannot be found by the Justices of Peace upon such Inquiry (being hindered by the *Perverseness* of the § 28. Certificate.
 19 H. 7. 13.
 P. 3. 15.
 Lam. 3. 8. *Furors*, or by the unlawful *Maintenance*, or *Embracery* of other Persons who put themselves into the Cause) then within one Month next after the Inquiry, the same Justices and Sheriff and Under-Sheriff, shall certify before the King and his Council, or into the * *King's Bench*, so much of the Fact and Circumstances thereof, as may by any Means appear unto them, with the Certainty of the Names of the

Lam. 319.
 * Br. Pre-munire 1.
 Cromp. 63.

the principal Offenders, upon Pain of *One hundred Pounds* to every of the said *Justices, Sheriff or Under-Sheriff*: And also the said *Justices*, with the *Sheriff or Under-Sheriff*, ought in the same *Certificate* to certify the Names of such *Maintainers and Imbracers*, with their *Misdemeanors*; and of the *Time, Place, and other Circumstances*, and the Impediments, why the Truth of the Riot, &c. is not found, upon Pain of Forfeiture of *twenty Pounds a-piece* to every of the *Justices and Sheriff*. *Cromp. 63. b. and 199. b.* The Form of such *Certificate*, see *hic*.

The End of this *Certificate* is but only to force the Offenders to answer thereto before the King and his Council: And though the Words of the Statute make this *Certificate* to be of the Force of a *Presentment* of twelve Men against the Offender; yet such *Certificate* is no Conviction, but that the Offenders may * traverse it, by the Words of the same Statute. And so this *Certificate* is in Nature of a *Declaration*, or Indictment at the Common Law; and therefore it ought to comprehend the Certainty of the *Time, Place, Persons*, and other material Circumstances.

* But such Traverse and Certificate shall be sent into the King's Bench, and there be tried.

P. 3.
Lam. 318.

If this *Certificate* be not made within *one Month after the Inquiry*, then is it not according to the Statute, and so not good to force the Offenders to answer.

If two *Justices*, and the *Sheriff*, shall see a Riot, yet any other two *Justices* of the County may *make the Inquiry*, and then they all together, or the first Two; or the last Two (with the *Sheriff or Under-Sheriff*) may make *Certificate* thereof within the Month after that *Inquisition* taken.

Where there be several *Certificates* made, or that the *Certificate* and the *Inquiry* do disagree, then that shall be preferred which is best for the King.

Lam. 320.
Cromp. 63.

If there shall be twenty Persons in a Riot, and the Jury shall find but ten of them guilty, yet the *Justices* may certify that twenty committed that Riot, and this *Certificate* shall stand good.

Also if any Thing material should be omitted, or left out of the *Inquisition*, yet it may be supplied by this *Certificate*, and it shall stand good.

If after the *Inquiry*, and before the *Certificate* made, the *Sheriff* shall die, or one of the *Justices* be put out of the Commission, no *Certificate* can then be made, by the Opinion of M. Marrow.

Lam. 320.

For the Form of such *Certificate*, see *hic postea*.

Upon the Default of the *two next Justices, Sheriff or Under-Sheriff* for not executing the said Statute of 13 H. 4. 7. the Party grieved may have *Commission out of the Chancery*, to inquire as well of the Riot, as of the Default of the said *Justices*, and *Sheriff or Under-Sheriff*.

§. 29.
Commission out of Chancery.

2 H. 5. 8.
P. 6.

Also the Lord Chancellor of *England*, as soon as he shall have Notice of such a Riot, shall send the King's Writ to the *Justices and Sheriff*, commanding them to execute the said Statute of 13 H. 4.

2 H. 5. 8.
P. 9.

And although that such Writ come not to the said *Justices, Sheriff or Under-Sheriff*, yet they shall not be excused of the Penalty of 100 l. aforesaid, if they make not Execution of the said Statute. *Ibid*.

§. 30.
Capias.

Also, if any Assemblies of People in great Number, in Manner of Insurrection, or other rebellious Riots, shall be done and committed, and that such Offenders shall withdraw themselves, to avoid the Execution of the Law, then upon *Certificate* by two *Justices of Peace*,

2 H. 5. c. 9.
8 H. 6. c. 14.
Rast. 374.

and

and the Sheriff of that County, by Letters under their Seals to the Lord Chancellor of *England*, of the same Riot, and that the common Voice and Fame thereof runneth in the said County, the *Lord Chancellor may make a Capias to the said Sheriff*, for the apprehending such Offenders; and after, if need be, a *Proclamation*, That the said Offenders yield themselves in the *King's Bench*, at a certain Day, upon Pain to be convicted thereof.

Note, That for Riots in Cities or Corporations which are armed with Power of Government within themselves; the Franchises may be seized, or the Corporation fined, as it hapned in the Case of the Riot where Dr. *Lamb* was slain; the City of *London* upon an Information in the *King's Bench*, was fined 1000 Marks. *Pasch: 8 Car.* See more *Chap. 135, 136.*

1 Geo.
cap. 6.

Where Twelve, or more, are unlawfully, riotously and tumultuously assembled together to the Disturbance of the Peace, and being required by a Justice, Sheriff or Under-Sheriff, Mayor, or other Head Officer, by Proclamation in the King's Name (herein after mentioned) to disperse themselves; and shall to the Number of Twelve, or more, unlawfully, riotously, and tumultuously continue together one Hour, they shall be adjudged guilty of Felony without Benefit of Clergy.

The Justice, Sheriff, &c. or other Head Officer, shall come as near the Rioters as he can with Safety, and with a loud Voice command Silence whilst the Proclamation is making, and then read or cause it to be read in these Words, or to the like Effect:

If. Our Sovereign Lord the King chargeth and commandeth all Persons being assembled immediately to disperse themselves, and peaceably to depart to their Habitations or lawful Business, upon Pain contained in the Act made in the first Year of King George, for preventing Tumults and riotous Assemblies.

The Proclamation.

God save the King.

If after Proclamation made the Offenders shall continue together one Hour, and not disperse themselves, it shall be lawful for any Justice, &c. or other Peace Officer, and all Persons whom they shall command to assist them to apprehend such Offenders and carry them before a Justice of Peace; and where any of them are killed in resisting the Person endeavouring to apprehend them, that Person shall be indemnified in so doing.

Any Rioters demolishing or pulling down, or beginning to demolish, &c. any Church, Chapel or Building for Religious Worship, certified and registred according to the Statute 1 *Will. 3. cap. 18.* or any Dwelling-house, Barn, Stable or Out-house, shall be a Felon without Benefit of Clergy.

Pulling down any Place of Religious Worship, &c.

Any Person with Force wilfully obstructing another to make Proclamation, whereby such Proclamation shall not be made, shall be a Felon without Benefit of Clergy; and Rioters knowing such Hindrance and Obstruction, and continuing together to the Number of Twelve or more afterwards, for the Space of an Hour, shall be Felons without Benefit of Clergy.

Obstructing the Reading of the Proclamation.

Where any Building is demolished in Part or in Whole by the Rioters, the Inhabitants of the Hundred shall answer the Damages to

Buildings being demolished.

the Hundred shall be liable to the Damages thereof.

the Persons injured, to be recovered in the Courts at *Westminster* against any Two or more of the Inhabitants thereof, to be levied and paid in such Manner as provided by the Statute 27 *Eliz.* And if the Action is brought for Damages done to a Church or Chapel, it must be in the Name of the Rector, Vicar, or Curate, and when recovered, it must be applied to the Rebuilding or Repairing such Church.

Prosecutions must be within a Year.

Prosecutions upon this Act must be commenced within one Year after the Offence committed.

C H A P. LXXXIII. *Vide XLVII.*

Rogues and Vagabonds.

THE Benefit of the Laws made for the setting to work, and Relief of the Poor, are worthy of the Care of the Justices of Peace, and of their best Endeavours, for the due Execution thereof; for by them,

1. Idleness is very much repressed: Idleness, which of it self is the Root of all Evil.

2. Infinite swarms of idle Vagabonds are rooted out, which before wandred up and down, to the great Danger and Indignity of our Nation.

3. We our selves are now compelled but to relieve the poor of our own Parishes, (whose Conditions and Estates we know) and to a Certainty wherewith we are now taxed by our Neighbours; whereas before we gave we know not what, nor to whom; and many Times to such as were ready to have cut our Throats, if Opportunity had served them.

Rogues are not to be sent to the House of Correction, but by Passes *Bulstr. Part 2. p. 357.*
to the Place of their Birth; and although it shall appear a Person was an Inhabitant a long Time in another Parish, and there become impotent by any Mischance in Labour, and then beg; yet he shall be sent to the Place of his Birth, as was resolved by Sir William Jones at Worcester Assizes, Lent, 14 Car. 1. in the Case of one Chappel. And it was then resolved, That if a Woman, great with Child, be sent to the House of Correction, and be there delivered of a Child, it shall not lie upon the Parish where the House of Correction is, but shall be sent to the Place from whence she was sent, as the Place of her last Settlement.

§. 4. Children.

The Rogue whose Place of Birth or last Dwelling cannot be known, having Wife and Children under seven Years of Age, they must go with the Husband to the Place where they were last wilfully suffered to pass without Punishment; where the Children must be relieved by the Work of their Parents, tho' the Parents be committed to the House of Correction.

A Rogue is taken at D. and will not confess the Place of his Birth, neither doth it appear otherwise, but that he confesseth truly his last Dwelling to be at S. Whereupon he is whipped and sent to S. and coming

coming to S. the Place of his Birth is learned to be at W. and the Rogue confesseth it to be so: In this Case the Rogue is to be sent to the Place of his Birth, without any new Vagrancy, for his settling at S. was no legal Setling. Resol. 27.

But here, first to describe to you these Manner of Persons (*sc.* Rogues and Vagabonds) that you may the better know them.

A Vagabond (as one saith) is he who hath neither certain House, nor Habitation, but liveth idley and loitering. A Man (as another describeth him) *sine re, sine spe, sine fide, sine sede*; or he may be called *Vagabundus, quia errat per mundum*.

A Rogue may be so called, *quia ostiarum rogat. Minsh.*

Or it signifieth an idle Beggar that wandereth from Place to Place, without a lawful Pasport.

A Beggar, *Mendicus quasi manu dicens* (speaking with the Hand) *Mos enim erat apud antiquos Egenum silentio manum extendere.*

And yet Vagabond in its proper Sense is one that wandereth about; and a Rogue and a Vagabond seem to be all one; for the Latin Words *vagus* and *vagabundus* signifie the one and the other. So as whosoever wandereth about idley and loitering is a Rogue or Vagabond, although he beggeth not, *quod nota.*

And although a Man have a certain Habitation, yet if he go about from Place to Place selling small Wares, he is punishable, and that although he be not taken wandering; for it is the Wandering it self, and not the being apprehended wandering, that brings him within Punishment. King v. Hollingsworth. T. 18 Jac. B. R. Roll's Rep. part 2. p. 172.

1. All Persons above the Age of seven Years going about begging, upon any Pretence or Colour whatsoever; yea, although they be licensed by any Subject, except it be in the Cases hereafter mentioned. *Rogues, and their Punishment.*

2. All idle Persons going about the Country, either using any subtil Craft or unlawful Games, or being Fortune-tellers or Jugglers, or using any other like crafty Science.

3. All Patent-gatherers, or Collectors for Gaols, Prisons or Hospitals, wandering abroad.

1 Jac 7. 4. All Fencers, Bearwards, Common-players * of Enterludes, and Minstrels wandering abroad. 21 Jac. cap. 28.

Resol. 10. 5. All wandering Persons, and common Labourers, being able in Body, using loitering, and refusing to work for reasonable Wages, not having living, otherwise than by Labour to maintain themselves, are Rogues. And yet such Persons as be of any Parish, and have able Bodies to work, and be no Wanderers abroad out of the Parish, though they refuse to work at such Wages as is taxed, or commonly given in those Parts, are not to be sent to their Place of Birth or last dwelling, &c. but to the House of Correction. See Tit. Poor.

Poor Persons begging in the Parish where they dwell (without the Appointment of the Overseers) they are to be sent to the House of Correction. *Quare tamen.*

6. All Persons wandering, and pretending themselves to be Egyptians, or wandering in the Habit and Form of Egyptians, not being Felons.

Resol. 13. 7. A Rogue, &c. that shall go with a general Pasport, *scil.* which is not directed from Parish to Parish, is still to continue a Rogue, and may be punished by whipping again.

R 1

8. Persons

8. Persons infected, or dwelling or being in any House infected with the Plague, that contrary to the Command of any Officer, shall wilfully go abroad and converse in Company, shall be punished as Vagabonds.

9. So all Persons being able to labour, and thereby to relieve themselves and their Families, that shall run away, or threaten to run away and leave their charge to the Parish, &c. 21 Jac. c. 28.

And all such Persons so threatening to run away (the same being proved by two sufficient Witnesses upon Oath, before two Justices of Peace of that Division) shall be by the said Justices sent to the House of Correction (unless such Person can put in sufficient Sureties for the Discharge of the Parish) there to be detained and dealt withal as a sturdy wandering Rogue; and from thence to be delivered at the Quarter-Sessions, and not otherwise.

But they are not to be sent to their Place of Birth, as wandering Rogues, but to the Place of their dwelling, if they have any, if not, then to the Place where they last dwelt by the Space of a Year, &c.

And so of Persons infected, &c. with the Plague, and punished as Vagabonds, as afore.

§. 7. Children under seven. Children under the Age of seven Years, being vagrant, must be sent to, and placed with the Father, or Husband of the Wife; and if he be dead, then with the Mother, (where she was born, or last dwelt by the Space of one Year.) And such Children, once thus settled or placed must there remain, and not be sent from thence to their Place of Birth, though after the Parents die, or run away, or that the said Children grow above the Age of seven Years, yea, and though the said Children after beg, and prove vagrant in that Town, for there they must be set to Labour. See Resol. 4, 9, 10.

Birth. One D. C. with a Child under seven Years of Age wandered, and desired a Warrant to go to E. where she had some Friends, and went through several Parishes until she came to G. and there died. The Question was, whither the Child should be sent? Also one B. a Wanderer, came to her Sister at D. with three Children, born in three several Parishes, and died. The same Question arose, and resolved by Jones and Whitlock, Justices of Assize at Stafford, Summer 5 Car. That these Children should be sent to the Places where they were born, and not where their Mothers died in transitu, and were so sent and settled as Poor, and not as Vagabonds; for a Child within seven Years of Age, shall not be said to be a Vagabond: And as they said, the Place of Birth, or the Place of their last Settlement, if it may be known, are in Judgment of Law said to be the Places of Settling. So that if one be born in one Parish, and afterwards is an Inhabitant in Service in another Parish, and then becomes a Wanderer, he is to be sent to the Place of his last Settling. Bulstr. part 2, 352.

§. 8. Wife. If the Wife being a vagrant Rogue, must be sent to her Husband, Resol. 3. though he be but a Servant in another Town.

If the Husband or Wife have a House (tho' as an Inmate) and either of them rogue about, they are to be sent to the Town where that House is. Resol. 5.

No Man is to be put out of the Town where he dwelleth, nor to be sent to their Place of Birth or last Habitation, but only a Vagrant Rogue, scil. such as wander abroad in the Country; and not such as are vagrant, or do beg in the same Town where they dwell. Resol. 6.

Such as their Estates of their Houses be expired, and Servants whose Time of Service is ended, they shall not be put out of the Towns where they last dwelt or served, &c. Vide Tit. Poor.

5 El. 4. One Justice of Peace may license Labourers in Hay-Time, and Harvest-Time to pass from one Country to another to work; but not to wander or begg. See the Title *Labourers*.

See 5 El. 4. And so any two Justices of Peace may make a Testimonial to *Two Ju-*
 P. Labor. Serving-Men, (or other Servants, as it seemeth) departing from their *Places*.
 7. Masters, but such Persons under Colour thereof, may not wander up and down idly, nor begg. See the Title *Labourers*.

P. Vag. 11. Incorrigible Rogues, be such as shall either appear to be dange-
 39 El. 4. rous to the inferior Sort of People, or such as will not be reformed *Incorrigible Rogues*.
 of their roguish Kind of Life.

Of the first Sort are such as shall offer any Violence, or shall use any threatening Speeches, or other like Misdemeanours towards any Person.

Of the other Sort seem these which follow, and such like.

1. Such as having had Punishment, and thereupon sent to their Place of Birth, &c. and there settled according to the Law, shall notwithstanding fall to their roguish Life again.

Resol. 1. 2. A Rogue that affirmeth, he was born in such a Town, in such a County, and is sent thither, if he were not born there in Truth, he is to be said an incorrigible Rogue, and is to be sent thence (by two such Justices as aforesaid) to the House of Correction in that County; and if there be none, then to the Gaol, until the next Sessions, there to be dealt withal according to the Statute.

3. The same Course is to be observed (if it appear not where he was born) if he untruly affirm, that he was last dwelling in such a Town and County, by the Space of a Year, and was not.

1. Note, that all Rogues are to be conveyed to the Place of Birth, *Birth*.
 Resol. 14. &c. by the Constables of every Parish (sc. from Constable to Constable, the next straight Way.) And therefore, if the Officer (sc. the Constable) of any Parish will not receive a Rogue, to convey him to the Place where he was born or dwelt; this is a Forfeiture of 5*l.* in such Officer that shall not receive the Party, to convey him or her, and he is to be bound, as aforesaid, to his good Behaviour.

Resol. 12. 2. So if the Constable or other Person, which shall convey a Rogue towards his Place of Birth, &c. if he shall not deliver him to the Constable of the next Parish.

3. If any be sent to a Town whereto he ought to be sent, and is refused, being a sturdy and impotent Rogue, the Persons so refusing, shall forfeit 5*l.* and may be bound to the good Behaviour.

Resol. 12. 4. Note, that he which is to be sent, is to be delivered or offered to the Church-wardens and Overseers, and if they shall refuse him, they shall forfeit 5*l.* as aforesaid.

The Way to rid the Country of those Rogues, is to give them either due Punishment (and that often, yea, at every Town, if they will not be reclaimed) and to keep them from Lodging, and other Relief, as much as may be; or else to send them to the Gaol as Incorrigible Rogues. (*Vide hic antea*.) ' For Punishment is all the Charity that the ' Law affordeth them.

' Now a great Cause of the still continuing of Rogues, is for that ' in many Out-houses and Barns they be received and lodged by Com- ' panions, and have their set Places of Meeting: To prevent and ' punish such, it were very fit that Persons that suffer their Barns ' and Out-houses to be so employed, without giving Notice to the ' Constable, should be bound over to the Assizes or Sessions. As for ' the Charges of conveying Rogues, the Constables ought to have

their Allowance and Relief, if need be, at the Sessions. *Resol. 21.*

§ 21. Every Justice of Peace may reward any Person that apprehend and bring before them any Rogues, Vagabonds, or sturdy Beggars, by granting an Order or Warrant under his Hand and Seal, to the Constable of the Parish which such Rogue or Vagabond passed through unapprehended, for Payment of two Shillings for every Rogue so apprehended; and upon Default of Payment, to proceed against such Defaulters according to the Statute of 1 Jac. cap. 7. And to allow out of the said Forfeiture two Shillings, and allowance for Loss of Time, as they shall think fit. 14 Car. 2. cap. 12.

The old Statutes 39 El. c. 4. and 1 Jac. 1 c. 7. are now repealed by the Statute 12 Anne and likewise so much of the Statute 7 Jac. 1 c. 4. §. 5. which relates to the privy Search, and by this last Statute, several Alterations are made as to the Description of a Rogue and Vagrant, his being apprehended and punished, the Place where he is to be sent, the Pass and the Certificate, the Binding a Vagrant to be Apprentice, &c. 12 Anne cap. 23.

And first, as to their Description, 'tis almost the same as mentioned in these old Statutes, for whoever is able to work, but will not, and wanders abroad not having wherewith to subsist but by their Labour is a Rogue.

So are Egyptians, or those who wander as such, Bearwards, Beggars, those who use any subtle Craft, Fencers, Fiddlers, otherwise called Minstrels, Fortune-tellers, and those who use such like crafty Science, those who use any unlawful Games, idle Persons wandering and begging, Juglers, those who pretend to Palmistry, Patent Gatherers, and those who pretend to it, those who pretend to Physiognomy, Players, and by those old Statutes, (Pedlars, and Petty Chapmen, Seamen, Soldiers, and Tinkers,) but these are all left out of this new Statute, and Soldiers, Mariners, and Sea-faring Men are excepted, but then they must be licensed by some Testimonial, under the Hand and Seal of a Justice of Peace, setting down the Day and Place where they landed, and the direct Way which they are to pass.

Persons described as aforesaid, and wandering, begging, or misordering themselves, may be taken up by any one, and carried before a Justice, but then the Person taking him up, must be charged so to do either by a Justice or by one who hath a lawful Authority, and in such Case if he either refuse or neglect to do it, he forfeits 10*l.* to the Use of the Poor, to be levied by a Warrant to distrain and sell, &c. being convicted by one Witness, before one Justice, &c.

He who apprehends a Rogue or Vagrant, and brings him before a Justice shall have 2*s.* paid to him by the Officers of the Parish where he was found begging, and through which he passed without being apprehended, which 2*s.* must be paid by an Order under the Hand and Seal of the Justice, and the Constable or Officer refusing to pay the 2*s.* on Demand, in such Case 20*s.* may be levied by Distress and Sale, by Vertue of a Warrant of one Justice, out of which he is to allow the 2*s.* to the Person who apprehended the Rogue, and such other Recompence for Trouble, Charge, and Loss of Time, as he shall think fit.

The Justice may examine a Rogue on Oath, &c. Refusing to be examined, shall be an incorrigible Rogue. The Justice may examine a Rogue or Vagrant on Oath, or any other Person who can inform him of his last Place of Settlement or Birth; the Person thus examined must subscribe it, which must be sent to the Sessions. Refusing to be examined on Oath, and giving an insufficient Answer, and being detected of Falsity, in a summary Way, shall be deemed an incorrigible Rogue.

Any

Any Officer failing in his Duty in apprehending Rogues or Vagrants, &c. or any Person disturbing him in the Execution of his Office, or rescuing or assisting in an Escape, and being convicted thereof, upon View of a Justice, or by the Oath of one Witness, shall forfeit 20 s. to the Use of the Poor of the same Parish, to be levied by Warrant, by Distress and Sale, &c.

He who hath a lawful Settlement, as well as a Vagrant who hath none, if found begging, &c. one Justice may order him to be whipped; or sent to the House of Correction, and then, and not before, he shall be sent by an Order to the Place where he was last lawfully settled; and if that cannot be known, then to the Place of his Birth.

If he is a *dangerous Rogue*, he may be sent to the House of Correction till the next Sessions, and then if the Majority of the Court adjudge him an *incorrigible Rogue*, he shall be whipped on three Market-Days successively in some Market-Town, and afterwards kept to hard Labour in the House of Correction; and if after a Commitment by the Sessions he escapes, this is Felony, to be tried in the County where he shall be taken.

Where he hath any legal Settlement since his Birth, he must by Order of two Justices, be sent thither; but if no such Settlement can be found, then one Justice may, by a Pass, send him to the Place of his Birth, but if under 14 Years old, and hath a Father and Mother living, then to the Place of their Abode, in Case the same or the Place of his Birth can be known; but if not, then to the Place where he was last found begging, &c. and thro' which he passed without being apprehended, and to be delivered to the Parish Officers of that Place.

cannot be known, then to the Place where he was found begging.

The Justice forfeits 5 l. if he sends a Vagrant to the Place of his Birth, having obtained a legal Settlement subsequent to his Birth, to be recovered by any Informer in the Courts at *Westminster*.

The Parish to which a Vagrant is sent by a Pass, must set him to work till he can get a Service; if he refuse to work, the Overseer, &c. shall carry him before a Justice to be sent to the House of Correction; the Parish not employing him, or suffering him wilfully to escape, if he wanders again and is retaken Begging or Wandering, the Justice where he is taken may compute the Charge which the County sustained by retaking him, which by Warrant shall be levied on any Parish-Officer who was in Default; and if such Default was in another County, the Warrant shall be brought to a Justice there, who shall cause the Money to be levied for the Use of the Poor, or the Person where such Charges shall be expended, and the Officer upon whom 'tis levied may put it into his Parish Rates to be allowed by the Parishioners.

A Parish-Officer not conveying a Vagrant as directed, shall forfeit 20 l. one Moiety to the Poor, the other to the Informer.

The Justice who makes the *Pass*, shall then give a Certificate to the Officer who conveys the Vagrant, setting forth how he is to be conveyed, either by Horse, Cart or on Foot, and to what Place, and how long he shall be in Conveying, &c. and what Allowance the Officer shall have.

The

Constable
must pursue
the
Directions
in the
Pass and
Certificate

The Constable must pursue the Directions in the Pass and Certificate, and pass the Vagrant the direct Way to that Place where he is ordered to be sent, if in the County; but if not in that County where he was taken, then to the first Town in the next County, named either in the Pass or Certificate, and to deliver him to the Constable or Parish-Officer, there, together with the *Pass*, taking a Receipt upon the *Certificate* that he was delivered there.

The next
Constable
must carry
him before
a Justice.

And that next Constable or Parish-Officer must carry the Vagrant before a Justice, &c. who must order him to be stripped and whipped, or sent to the House of Correction; there to be kept to hard Labour for two or three Days, and from thence to be conveyed by the same Pass (but with a new Certificate) to the next County, and so from one County to another, till he is brought to the Place where he was first ordered to be sent.

Constable
must receive
him with the
Pass if he
hath been
whipped.

And the Constable or other Parish-Officer at that Place is to receive him, together with the *Pass*, and must sign a Receipt of his Delivery to him; but no Constable, &c. is obliged to receive him; unless it appear by the Pass that he hath been whipped or sent to the House of Correction.

Who are
not to be
whipped.

But Women great with Child, and Soldiers wanting Subsistence, and having Certificates from their proper Officers, or from the Secretary at War, and other Persons, whom the Justices shall judge not able to undergo the Punishment, are not to be whipped or sent to the House of Correction; this must be *certified in the Pass*.

Counter-
feiting a
Certificate
or not con-
veying a
Vagrant
as directed, forfeits 20 s.

Officer counterfeiting a Certificate, or altering the Sum, or not conveying a Vagrant as directed, forfeits 20 l. besides the Sum fraudulently taken; one Moiety to the Poor, the other to the Informer, to be levied by Warrant, &c. by Distress and Sale, &c.

Justice
may examine
a
Constable
on Oath,
&c.

The Justice may examine a Constable or other Officer on Oath, of the Conveyance and Delivery of a Vagrant; refusing to be sworn or neglecting their Duty, he loses the Sum allowed him by the Certificate.

Sessions
may ap-
point Rates
for Passing.

The Sessions may appoint Rates for *Passing*, &c. and may make Orders at Discretion, and raise Money quarterly to be paid to the High Constables who are answerable for it, and to pay to the Petty Constables what the Justices shall allow in their *Certificates*, &c. which, together with the Receipts of what is therein allowed and taken by the High Constables, they may discount with the Treasurer of the County Stock.

Sessions
may en-
quire of
Defaults.

The Sessions likewise to which *Passes* are transmitted, may enquire of Defaults of Officers in permitting or encouraging Escapes, and punish the same.

Rogue
coming
from Ire-
land may
be put on
Board any
Vessel to be
sent back.
Constable
to remove
idle Persons
begging in
the Street.

A Rogue brought from *Ireland* and taken begging here, may be put on Board any Vessel to be sent back again; the Sessions may appoint the Rates for reconveying him, and the Constable must make Oath before one Justice what Charge he hath been at, who by an Order under his Hand and Seal may direct the Payment.

The Constable, &c. on Complaint of any two Inhabitants, may remove loose, idle and disorderly Persons, as the blind and lame, from begging in the Streets, Highways and Passages, and upon their Refusal to be gone, and begging there again, they shall be whipped till they are bloody.

If it appear to the Justice, either by Confession of the Vagrant, or ^{In which Cases the Justice may bind a Vagrant to be Apprentice.} by the Oath of one Witness, that he had no legal Settlement since his Birth, and that he hath been a Vagrant or common Beggar for two Years last past; tho' he had a Settlement before that Time, yet the Justice may bind him Apprentice for seven Years to the Person who apprehended him, or to any other Person in Great Britain who is willing to receive and employ him, or in any of his Majesty's Plantations: And if he shall be transported thither, then the Master must be bound in a * Recognizance of 40 *l.* that the Person shall be employed ^{* To be transmitted to the Sessions.} there, or in a British Factory, and supplied with convenient Necessaries, and not be sold to an Alien, but to be discharged having served seven Years.

The Vagrant may appeal to the next Sessions against the Order ^{Vagrant may appeal against the Order for binding him Apprentice.} to place him Apprentice, which Appeal shall be final, but he must be kept in the House of Correction till that Time.

Two Justices may by Warrant, &c. cause furious and lunatick Persons to be taken and safely locked up, and to be chained, if necessary, ^{Furious Lunaticks must be taken and locked up.} if his Settlement was in their County; if not, then to be sent to the Place where last lawfully settled, in the same Manner as Vagrants are to be sent, (excepting Whipping) and there to be locked and chained.

And those two Justices may order the Charges of conveying such Persons, out of their own Estates; but if they have none, then the ^{Charges of conveying Lunaticks, how to be raised.} Charges, during their Restraint, shall be made by such Ways and Means as Provision is made for the Poor.

The Master of a Ship bringing a Rogue or Vagrant from any of the Plantations, and who is a Native thereof; or any Person likely ^{a Ship bringing a Rogue from the Plantations,} to be a Beggar, and who shall afterwards be found begging here, such Master shall forfeit 5 *l.* for every such Person.

^{ons, and afterwards found begging, forfeits 5 *l.*}

And the Constable, where the Person shall be found begging, may ^{Constable may cause him to be whipped where} cause him to be whipped, and then to be put on Board any Vessel to be transported back again.

^{found begging, &c.}

The Sessions are to settle the Rate for his Passage, the Officer having made Oath of his Expences in taking and punishing such Vagrant, and then the Justice may * order the Payment thereof, as ^{Sessions to settle the Rate of} so of the 5 *l.* for importing a Rogue, forfeited by the Master of the Ship, who neglecting or refusing to pay it on Demand, it shall by a ^{him back again.} Warrant, &c. be levied by Distress and Sale of the Goods or Ship ^{* Under his Hand and Seal.} whilst within the Jurisdiction of the Justice; but if not within his Jurisdiction, then his Order for Payment of the Money shall be removed into *B. R.* by *Certiorari*, and being filed, that Court may direct Process against the Master or Owner of the Ship by *Capias*, *Fieri facias*, or *Elegit*.

But the Master may traverse such Order upon entring into a ^{Master of the Ship may traverse the Order.} Recognizance of 50 *l.* to pay the Costs and Charges of such Traverse.

Where

* Isle of Man, Silly, Jersey, Guernsey Board, by a Warrant directed to him by one Justice of the County where the Ship lieth, and he refuseth so to do, he forfeits 5*l.* to the Use of the Poor of the Parish where the Person lieth for Transportation. *Master of a Ship refusing to transport a Rogue, forfeits 5*l.**

But if he receives him, then the Constable shall pay him so much *per Head*, as the Sessions shall appoint him, and the Master must give a Receipt on the Back of the Warrant for so much Money paid for transporting.

By the aforesaid Act 12 *Anne*, the Justices of Peace of every County, or any of them, may meet before the Quarter-Sessions in some convenient Place, and by their Warrant command the Constables and Parish-Officers (assisted with sufficient Men of the same Place) to make a *general privy Search* in one Night thro' their several Limits, in Order to discover and take Rogues, Vagrants and sturdy Beggars, to be brought before the said Justices, and to be examined, punished and passed, as before mentioned.

C H A P. LXXXIV. *Vide XLVIII.*

Robbery. See Highway-men.

§. 1.
One Justice.

AFTER a Robbery committed, the Party shall not have his ^{27 El. 13.} ^{P. Hue & Cry 8. 10.} ^{Co. 7. 7.} Action upon the Statute against the Hundred, except he shall with all Speed convenient give Notice of the said Robbery to some of the *Inhabitants* dwelling in some *Town, Village, or Hamlet, near to the Place where such Robbery was committed*; and also except he shall commence his *Action* within *one Year next after such Robbery committed*; and also except he shall first *be examined upon his Oath (within twenty Days next before such Action brought)* by some one Justice of Peace (of the County where the Robbery was committed) dwelling within or near to the said Hundred where the Robbery was done, whether he doth know the Parties that committed the said Robbery, or any of them: And if he knoweth any of them, then also (before such Action brought) he shall be bound before the same Justice by Recognizance, to prosecute effectually the said Offenders by Indictment or otherwise, according to the due Course of Law. *Vide Plow. 128.*

1. *Si mon servant ou Carrier que carrie mes biens soit Robb' cesty de que les biens fuer' prises serra examin', & jure devant le Justice de P. & nemy le owner del biens: & si le servant ou Carrier ne voil estre examin' l'owner n'ad remedy.*

2. *Que home poit estre jure in son proper cause, sc. quant argent son servant avoit.* ^{Plowd. 122.}

After a Robbery committed, and Notice thereof given, as aforesaid, the whole *Hundred* must answer the Loss, if the Robbers be not taken within *forty Days*. And if the Robbery be done in the Division of two Hundreds; both the Hundreds, and the Franchises within them, ^{27 El. 13.} ^{P. Hue & Cry 4. 5.}

them, shall be answerable for the Robbery done, and also for the Damages. *Stat. Winch. cap. 2.*

27 El. 13. And yet because the Party robbed hath his Recovery and Execution against some one or few Persons of that Hundred, therefore for Contribution.

* Contribution to be yielded from the Residue of the said Hundred, upon Complaint made by the Parties against whom such Recovery and Execution is had; any two Justices of Peace (the one being of the *Quorum*) being of the same County, and inhabiting in or near the said Hundred where such Execution shall be had, may assess and tax according to their Discretions, proportionably all and every the Towns, Parishes, and Hamlets, as well of the same Hundred (where the said Robbery was committed) as also of the Liberties within the said Hundred, towards an equal Contribution to be had for the Relief of the Parties charged: The which Taxation or Sums, the Constables of every Town shall, within their Town, Parish or Limits, ratably and proportionably tax and assess upon every Inhabitant and Dweller in every such Town, Parish, Village, or Hamlet, for and towards the Payment of such Taxation and Assessment so made by the said Justices upon such a Town, &c. And if any Inhabitant of such Town, &c. shall refuse to pay the said Taxation, then it shall be lawful for the said Constables, and every of them to distrain for the same, &c. And the same Distress to sell, and the Money thereof coming to deliver over to the same Justices, or to one of them within ten Days after Collection. All which the said Justices shall deliver over (upon Request) to the Parties charged, to whose Use the same was collected.

Ibid. Note, a Person coming to inhabit after the Robbery and Judgment given is not chargeable to be taken in Execution; and so was the Opinion of the Court in one Dean's Case, Mich. 10 Car. in the Common Bench.

But a Person coming after thither to inhabit is assessable, because the Country is chargeable at the Time of the Assessment, and not the Persons which were there at the Time of the Robbery committed, as Justice Barkley said, and the Court seemed to agree in Sir Jo. Compton's Case. Pas. 15 Car. in the King's Bench. Quare the Difference.

Note, That the Inhabitants of any other Hundred (within the same County where the Robbery was committed, or within any other County, with the Franchises within the Precincts of such Hundred) wherein Negligence, Fault or Defect of Pursuit, and fresh Suit after Hue and Cry made, shall happen to be, shall answer and satisfy the one Moiety of all and every such Sums of Money and Damages as shall be recovered or had against the Hundred in which the Robbery was done.

And the Recovery of such Moiety shall be in the Name of the Clerk of the Peace, where such Robbery and Recovery is, without naming his Christian or Surname: And such Suit shall not abate by the Death or Removal of such Clerk of the Peace. 27. El. 13.

And the like Taxation, Assessment, Levying and Payment, as aforesaid, shall be had and made for a Contribution within every Hundred where there was any Negligence, Fault or Defect of Pursuit, and fresh Suit after Hue and Cry, viz. If upon Suit any Recovery and Execution of any Money, or any Damages shall be had against some one or few Persons of that Hundred where such Default was (towards the Ease of that Hundred where the Robbery was done) upon Complaint made by the Parties so charged, to any two such Justices of Peace,

the said Justices may make the like Assessment, &c. toward the Relief of the said Parties so charged.

Note, That if any Man be robbed *in his House*, the Hundred shall not be charged therewith, whether it were done in the Day or in the Night. Co. 7. 6.

§. 4.
When the
Hundred
is not
charged.

Also a Robbery done *in the Night* shall not charge the Hundred; Ibid. but yet if it be in the Day-Time, or by Day-Light, though it be before the Sun-rising, or after the Sun-setting, the Hundred shall answer for it.

If upon Pursuit any one of the Offenders be apprehended, the Hundred shall not be charged, although the Residue of the Offenders happen to escape; but Pursuit without apprehending some one of the Robbers is no Excuse. 27 El. 15.
P. Hue & Cry 7.
Co. 7. 7.

If the Party that was robbed shall himself take any of the Thieves after Hue and Cry made, this shall excuse the Hundred. Cro. 179.

Although one of the Thieves be taken, yet if Hue and Cry be not duly made, the Town where the Default is, shall be amerced: But the Party robbed shall have no Remedy for his Money (of the Hundred) in Regard that one of the Thieves is taken. And this is by Force of the Statute 27 Eliz. whereas the Amerciament is by Force of the Statute of Winchester.

It seemeth by my Lord Dyer *Ann. 22. Eliz.* that the Statute is satisfied, if the Names of the Offenders be described; so that they may be indicted and outlawed. *Quere inde*, for the Words of the Statute of 13 Edw. 1. and 28 Edw. 3. are, That the County must answer for the Bodies of such Offenders. *Winch 13 Ed. 1. cap. 2. and Stat. 28. El. 3. cap. 11.* Dyer 370
Pl. 9.
P.R. 155.

Note, The Party robbed must bring and commence his Action within 20 Days next after his Examination taken before the Justice of Peace. 36 El. Dew's Case.

Also the Justice of Peace must be abiding within the County, at the Time of Examination taken by him; as it seemeth; for the Justice of Peace being out of the County, is but a private Man, and hath no Authority to take such Examination. See the Title, *Justices of Peace, hic, c. 6.*

If a Man be robbed in *Middlesex*, and make Hue and Cry freshly into *Essex*, if the Towns adjoining do not according to the Statute of *Winchester*, the Party robbed may have his Action of Debt in the one County or the other, by *Fincham. 15 Edw. 4. 18. Br. Dett. 104.*

§. 5.
Highways.

Highways leading from one Market-Town to another, shall be enlarged, so that there be neither Dike, Underwood, nor Brush, whereby a Man may lurk to do hurt, within two hundred Foot of the one Side and of the other; and if by Default of the Lord that will not amend the Ways as aforesaid, any Robberies be done therein, the Lord shall be answerable for the Robbery: And if a Park be near the Highway, the Lord must set his Park two hundred Foot of each Side from the Way as aforesaid; or else must make such a Wall, Dike, Hedge, or Pale, that such Offenders may not pass to and fro there. *Winch 13 Ed. 1. cap. 5.*

Every Justice of Peace may cause such Highways to be enlarged and cleaned as aforesaid. See *hic antea Tit. Highways.*

Runnaway. See Vagrants.

C H A P. LXXXV. *Vide XLIX.*

Sacraments.

- ^{1 Ed. 6. 1.} ^{P. Just. 8.} **I** T seemeth that three Justices of the Peace (one of them being of ^{§. 1.} the *Quorum*) may, out of the general Sessions, take Information ^{Three Ju- fices.} and Accusation (by the Oaths of two honest Persons) against such as shall *deprave or unreverently speak* of the Sacrament of the Body and Blood of our Lord and Saviour *Jesus Christ*, against the Statute, &c. And may bind the Accusers and Witnesses by Recognizance (in five Pounds apiece) to give in Evidence at the Trial. But Mr. Lamb. maketh a *Quare* hereof. *The Statute of 1 E. 6. c. 1. is repealed by 1 Ma. 1. But is revived by 1 El. 1. in such Manner as the same was, 1 E. 6.*
- ^{Lam. 352.} ^{1 E. 6. 1.} And such Person, being indicted at the Sessions, and found guilty ^{§. 2.} of *depraving, despising, or contemning the Blessed Sacrament*, by *Penalty.* Words or otherwise, he shall suffer Imprisonment, and make Fine and Ransom at the King's Pleasure.
- ^{1 E. 6. 1.} The Justices of Peace in Sessions may hear and determine Offences ^{§. 3.} and Contempt against that Act, so as the Parties offending be in- *Power.* formed of, or presented within three Months after the Offence committed.
- ^{1 E. 6. 1.} The Justices of Peace may make Process by two, *Capias* and *Ca-* ^{§. 4.} *pias Utlegatum*, into that or any other County, and three of them *Process.* may bail the Offender in Order to his Trial.
- ^{1 E. 6. 1.} The Justices of Peace in Sessions may award a Writ to this Ef- ^{§. 5.} *fect, Rex, &c. Episcopo L. salutem precipimus tibi quod tu, Can-* *Writ to the Bishop.* *cellarius tuus vel alius deputatus tuus sufficienter eruditus sitis cum* *Justic. nostris ad pacem in Com. nostro B. Conservand. assign. apud* *D. tali die ad Sessionem nostram adtunc & ibidem tenendam ad dan-* *dum consilium & advisamentum eisdem Justic. nostris ad pacem su-* *per arraignmentum & deliberationem offendent. contra formam Sta-* *tuti concernen. sacrosanct. Sacramentum Altaris.* Which Writ must be directed to the Bishop of the Diocese.
- ^{1 E. 6. 1.} The Party indicted may purge and try his Innocency by Witnesses. ^{§. 6.}
- ^{14 Car. 2.} ^{cap. 4.} Of the Uniformity of Common Prayer and Sacraments, see the Statute 14 Car. 2. cap. 4, at large, and 15 Car. 2. cap. 4.
- See for the Process against such as deprave the Sacrament, *hic.* Tit. *Process.*

C H A P. LXXXVI. *Vide XLIX.*

Sabbath-day, or Sunday.

NO Carrier with an Horse, nor Waggoner, Carter, nor Wainman, ^{§. 1.} with any Waggon, Cart, or Wain, nor any Drover, with any *Penalty.* Cattle, shall by themselves, or any other, travel upon the Sunday, upon Pain that every Person so offending, shall forfeit twenty Shillings for every such Offence. 3 Car. c. 1.

- §. 2. 'This Statute gives the Forfeiture of twenty Shillings for Breach of one Sabbath-day, although the driving on that be through several Parishes, and where the Action is first attached, or Distress first taken, that Parish shall have the Benefit of this Forfeiture. *Resol.* 16.
- §. 3. Butcher. If any *Butcher*, 'by himself, or any other for him, by his Privy or Consent, shall kill, or sell any Victual upon the Sunday, he shall forfeit for every such Offence, 6s. 8d. *ibid.*
- §. 4. Punishment. Any one Justice of Peace (Mayor, or Head-Officer of any City or Town Corporate) within their Limits, upon their own View of any the said Offences, or upon Proof thereof upon Oath, by two or more Witnesses, or upon the Confession of the Party offending, may take their Warrant to any Constable or Church-warden (within their several Limits, where such Offence shall be done) to levy the same Forfeitures by Distress and Sale of the Offender's Goods, rendering to the Party the Overplus: 'Or may be sued for in any Court of Record, in any City, or in the Sessions.
- Every Justice, and Head-Officer aforesaid, have Power to minister an Oath to such Witnesses, *ibid.*
- §. 5. Forfeitures. All the said Forfeitures shall be employed to and for the Use of the Poor of the Parish where the Offence shall be committed, *ibid.*
- And yet any such Justice, or other Head-Officer, out of the said Forfeitures, may reward any Person or Persons that shall inform, or otherwise prosecute any such Offender according to their Discretions, so that such Reward exceed not the third Part of the Forfeiture, *ibid.*
- Provided, that no Person shall be impeached by this Act, unless he be questioned thereof within six Months after the Offence committed.
- 3 Car. cap. 1.
- 'There shall be no *unlawful Exercises*, &c. used upon the Sabbath-day. *Vid.* Tit. Games.
- Against Fairs, and Buying and Selling upon the Sabbath-day, *hic* Tit. Market.
- §. 6. Shoemakers. 'Any *Shoemaker* that shall shew, with an Intent to sell any *Shoes*, *Boots*, *Buskins*, *Stirrups*, or *Slippers*, upon the Sunday, shall forfeit the Goods shewed, and 3s. and 4d. for every Pair so shewed. 1 Jac. 22.
- §. 7. Working. 'If any Person of the Age of 14 Years or above, shall on the Lord's Day, or any Part thereof, do or exercise any *wordly Labor*, Business, or Work of his ordinary Calling, (except Works of Necessity and Charity) he shall forfeit 5s. for every Offence.
- §. 8. Selling. 'No Person shall *cry*, shew forth or put to Sale any *Wares*, *Fruits*, *Herbs*, *Goods* or *Chattels* (except Milk before 9 in the Morning, and after 4 in the Afternoon) upon Pain to forfeit the same.
- §. 9. Travelling. 'No *Drover*, *Horscourser*, *Waggoner*, *Butcher*, *Higler*, or any their Servants, shall travel or come to their Inn or Lodging on the Lord's Day, or any Part thereof, upon Pain that each Offender forfeit 20s. for every Offence.
- §. 10. Watermen. 'No Person shall use, employ, or travel upon the Lord's Day with any *Boat*, *Wherry*, *Liter* or *Barge*, (except upon extraordinary Occasion, to be allowed by some Justice of Peace or Head-Officer of the County or Place where the Offence is committed) upon Pain to lose 5s. for every Offence.

Ibid. ' The Conviction must be before any Justice of the County or §. 11. Conviction.
 ' Town, or Chief Officer, by View, Confession or Proof of one or more
 ' Witnesses, who shall give Warrant under Hand and Seal to the
 ' Constables or Church-wardens of the Parish or Parishes where the
 ' Offence is committed, to seize and sell the Goods shewed, and to
 ' levy the Forfeitures by Distress and Sale, rendring the Overplus;
 ' and in Case of Want of Distress, or Insufficiency, or Inability to
 ' pay, the Party to be put in the Stocks two Hours.

Ibid. ' Out of the Forfeitures, the Justices, Mayor, or Head Officer §. 12. Reward.
 ' may reward any Persons informing, so as the Reward exceeds not
 ' one Third of the Penalties.

Ibid. ' The Act not to extend to dressing of Meat in private Families, Extent.
 ' nor in Inns, Cooks Shop, or Victualling Houses, for such as cannot
 ' otherwise be provided for.

' No Person to be impeached thereupon, unless presented for the Impeach-
 ' same within ten Days after the Offence. ment.

' If any Person travel on the Sunday, and be robbed, the Hundred §. 13. Robbery.
 ' shall not be chargeable to him; but in Default of Hue and Cry made
 ' shall be chargeable to the King for so much as might have been re-
 ' covered against them.

' If any Person on the Lord's Day serve or execute, or cause, §. 14. Arrest.
 ' &c. any Writ, Process, Warrant, Order, Judgment or Decree,
 ' (except in Cases of *Treason, Felony or Breach of the Peace*) such
 ' Service shall be void, and the Party liable for Damages, as if no
 ' such Writ, &c. had ever been made.

All the Laws made for frequenting Divine Service on the Sabbath-
 Day are still in Force; notwithstanding the Statute 1 *Willi. cap. 18.*
 unless Persons go to some Congregation of religious Worship, tole-
 rated by that Act.

Salt. Butter.

§ & 6 W. & M. c. 1. THE Officers by this Act appointed, may seize all such Salt which Taxes.
 shall be conveyed away before Entry made, without Warrant Salt to be
 of the Commissioners, or other Collectors: And the Salt that shall seized
 be so seized, shall be brought to the Office next the Place where such which is
 Salt shall be so seized, and there detained: And if the same be not conveyed a-
 claimed by the true Owner within ten Days after Seizure, it shall be way before
 forfeited, and sold at the next general Day of Sale to be appointed Entry.
 by the Commissioners or their Officers; one Moiety to the Use of their
 Majesties, and the other to him that seized the same. And if the
 Owner shall claim the same within ten Days, and shall not make it
 appear before the next Justice of Peace in the County where such
 Seizure was, by the Oath of one or more Witnesses, that the Salt was
 duly entred, and that there was a Warrant for carrying away the
 same, then it shall be forfeited and disposed as aforesaid, and he that
 carried, or caused it to be conveyed away, shall forfeit double the
 Value.

Ibid. The Justices of Peace (not concerned in making or selling Salt) at Prices of
 every *Easter* and *Michaelmas* Sessions shall set the Prices of Salt to be
 be sold by the first Seller, for the next half Year, and none to sell set by the
 above those Prices, under the Penalty of 5*l.* and Forfeiture of double Justices.
 the Value, to be levied by Distress and Sale of the Offender's Goods,
 one half to the King, and the other to the Informer.

No

No Person shall be capable of acting as Chief Commissioner for collecting the said Duties, till he hath taken, before one of the Barons of the *Exchequer*, the Oaths appointed in the first Year of King William and Queen Mary, entituled, *An Act for abrogating the Oaths of Supremacy and Allegiance*, and the Oath following, *You shall swear to execute your Office truly and faithfully without Favour or Affection, and shall from Time to Time true Account make and deliver to such Person and Persons as their Majesties shall appoint to receive the same, and shall take no Fee or Reward for the Execution of the said Office from any other Person than from their Majesties, or those whom their Majesties shall appoint on that Behalf.* The like to be taken by the other Officers before two of the Chief Commissioners, or two Justices of Peace of the Place where he shall be appointed Officer.

General Issue. The Defendant may plead the General Issue, on Suit, and give, *5 & 6 W. & M. c. 1.* the special Matter in Evidence; and if the Verdict pass for the Defendant, or the Plaintiff be Non-suit, he shall have double Costs.

Certiorari. No *Certiorari* shall supersede Execution, or other Proceedings, upon any Order made by the said Chief Commissioners or Justices of Peace in Pursuance of this Act. *Ibid.*

By the Statute 9 & 10 W. 3. All Salt shall be measured by a Bushel of eight Gallons, *Winchester Measure*, by fit Measures, sworn and admitted by some Neighbouring Justice, without Fee, upon Forfeiture of double the Value of Salt not so measured. *Ibid.*

Weight, after the Rate of 56 Pounds the Bushel, and not by Measure, on Pain of 5 l. being convicted by two Witnesses before two Justices, to be levied by Distress, and to be committed till Satisfaction made.

If any Merchant, being a Subject of this Realm, shall ship any Salt that hath paid the Duty, to convey it by Sea to any Part of *England*, and the Vessel shall happen to be lost or taken, he shall upon Proof, before the Justices at the Quarter-Sessions, of such Loss, have a Certificate of it, and upon producing the same to any Collector of this Duty, the Officer shall let him buy the like Quantity, without paying any Duty for the same. *Ibid.*

Nominees Life. Each Contributor upon the Terms of having an Annuity for one, two or three Lives, their Executors, &c. upon demanding any Payments, unless the Nominee or Nominees, or one of them appear in Person at the said Receipt, shall produce a Certificate of the Life of their Nominee, signed by the Minister or Church-warden of the Parish, where such Nominee shall be then living, or make Oath of the Truth of the Life of their respective Nominee when the Payment shall become due, before one or more Justices of Peace of the County, Riding, City or Town, wherein such Person at the Time of making the said Oath shall reside, which Oath the Act gives Power to administer. And the Justice or Justices shall make a Certificate thereof, without Reward or Fee. *5 & 6 W. & M. c. 14.*

C H A P. LXXXVII.

Schoolmaster.

- 23 El. 1. **I**F any keep a Schoolmaster, which shall not repair to Church, §. 1. *Licence.*
 or be allowed by the Ordinary, shall forfeit for every Month
 10 Pounds. But the Ordinary shall take nothing for such Allow-
 'ance, and the Schoolmaster, so teaching, shall be disabled to be a
 'Teacher of Youth, and shall suffer Imprisonment for one Year with-
 'out Bail. It seems by this Act, being in the Disjunctive, that al-
 'though he doth not come to Church, yet if he be allowed by the
 1 Jac. 'Ordinary, it shall excuse the Penalty. See also. 2 Jac. 4. none
 'shall use or teach a School out of the Universities and Colledges,
 'except a Grammer School, or in some Gentleman's House, or be
 'licensed by the Ordinary, upon Pain that the Schoolmaster, and he
 'that retaineth him, shall forfeit 40 Shillings a Day, to be recover-
 'ed by Action.
- 14 Car. 1. **I**f any Schoolmaster or other Person instructing Youth in any §. 2.
 c. 14. 'private House or Family, as a Tutor or Schoolmaster, shall instruct
 'or teach Youth, as a Tutor or Schoolmaster, without Licence from
 'the Archbishop, Bishop or Ordinary, for which he shall pay twelve
 'Pence, and no more. And before Subscription made, as that Act
 'prescribes, for the first Offence shall be imprisoned three Months,
 'without Bail: And for the second, and for every other Offence,
 'shall suffer Imprisonment for three Months, without Bail, and pay
 'the King 5*l*.

*Seamen. See Mariners.**Sessions. See Chap. 185.*C H A P. LXXXVIII. *Vide L.**Sewers.*

- 39 El. 9. **S**Ewer signifieth such Passages, Gutters or Drains, as carry the §. 1.
 p. 16. 'Water into or towards the River or Sea, and the Office of the
 'Commissioners of Sewers, is principally to see such Passages, Gut-
 'ters, Drains and Ditches well scoured, kept and maintained in the
 'Marsh and Fen Counties, for the better Conveyance of the Water
 'into the Sea.
- 15 El. 9. Six Justices of Peace in the Shire where any Laws and Ordinances §. 2.
 of Sewers are to be executed, (two being of the *Quorum*) with- *Sir Just.*
 in their Limits, may execute the said Laws and Ordinances of the *car.*
 Commissioners of Sewers for one Year after the Expiration of any
 such Commission, except a new Commission be published in the
 mean Time.

Note,

Note, that the Proceedings of the Commissioners of Sewers ought to be limited and bounded with the Rules of Law and Reason, and according to the ancient Statutes and Ordinances. Co. 5. 100.
& 10. 138,
140.

§. 3. Now these ancient Statutes concerning Sewers are many, and are of three Sorts. Co. 10.
143.

The first Sort consists in *defending and repairing the Walls, Banks and Sewers, &c.* Of this Sort are the Statutes made, 9 H. 3. cap. 15, & 16. 6 H. 6. cap. 5. 18 H. 6. cap. 10. 23 H. 6. cap. 9. 12 E. 4. cap. 6. 4 H. 7. cap. 1. & 6 H. 8. cap. 10.

The second Sort consists in *pulling down and removing Nuisances, &c.* As by the Statutes made, 9 H. 3. c. 23. 25 E. 3. 4. 45 E. 3. 2. 1 H. 4. 12. 9 H. 6. c. 9. & 12 E. 4. c. 7.

The Third consisteth of both Sorts, *sc.* as well in *repairing the Banks, &c.* as in *pulling down Nuisances, &c.* And of this Sort are these Statutes following, *viz.* 23 H. 8. c. 5. 25 H. 8. c. 10. 3 E. 6. c. 8. 13 E. 7. 9.

The Inconveniences which insue by these Nuisances, and especially by the new levying, or inhancing of Weirs, Mills, Stanks, Fish-garths, Locks, Stakes, Kidles and Flood-gates, are these, *scilicet*, The common Passage of Ships and Boats in the great Rivers, as also Meadows, Pastures, and Arable Grounds adjoining to the Rivers, be greatly disturbed, drowed, wasted and destroyed, many People perished, and the young Fry of Fish destroyed. See 1 H. 4. c. 12. 4 H. 4. c. 11. & 12 E. 4. c. 7. See Tit. Weirs.

The Form of the Commission of Sewers; the Authority of the Commissioners, as also the Form of their Oath, you may see at large in the Statute 23 H. 8. c. 5. & P. 2. 4.

§. 4. Every Commissioner shall, before he execute that Office, before Persons authorised by *ded potestas*, or before the Justices of Peace in their Quarter-Sessions, take this Oath.

YOU shall swear, that you, to your Discretion, Wit and Power, shall truly and indifferently execute the Authority to you given by this Commission of Sewers, without any Favour, Affection, Corruption, Dread or Malice, to be born to any Manner of Person or Persons. And as the Case shall require, you shall consent and endeavour your self, for your Part to the best of your Knowledge and Power, to the Making of such just, equal, and indifferent Laws and Ordinances, as shall be made and devised by the most discreet and indifferent Number of your Fellows, being in Commission with you, for the due Redress, Reformation and Amendment of all and every such Things as are contained and specified in the said Commission. And the same Laws and Ordinances to your Discretion, Wit, and Power, cause to be put in due Execution, without Favour, Dread, Malice, or Affection. As God you help, and all Saints. 23 H. 8. 5.

And shall also receive the Sacrament, and take the Oaths, and make the Declaration prescribed by 25 Car. 2. which you shall find *hic. c. 4.*

§. 5. Note, That the King by the Common Law, may award his Commission of Sewers, for the Amending of the Sea-Banks, and for the Repairing, amending and scouring other Banks, Sewers, Gutters, Ditches, Pits, and Trenches, so as the Fresh-waters may have their

their direct Course. *F. N. B.* 113. *a.* And see there the Form of that Commission, and the Proceedings thereupon.

Co. 10. 141. These Commissioners cannot make any new great River, neither can they make new Inventions (as artificial Mills to cast out the Waters, or such like) but such new Rivers, and new Inventions (if they be for the publick Good) ought to be made by Parliament: And yet the making new of an antient Bank or a Sewer in a Place more fit, and with some Alteration and Distance, and upon Necessity, seemeth to be warrantable.

These Commissioners cannot cast down any *Mills, Causeys* or *Stanks, &c.* erected before the Time of *Edward* the First, but only may cause them to be abated, if they be raised above their antient Heights. Co. 10. 138.

These Commissioners ought to *tax none towards these Reparations, &c.* but such as have Prejudice or Loss by the *Nusances* or Defaults, and which have Benefit by the Amending or Removing them. Co. 10. 142. See the Statute and Form of the Commission. 6 *H. 6. c. 5.* §. 6. *Tax.*

Co. 5. 100. Also these Commissioners ought to *tax* all that be in Danger to be indamaged by the not Repairing, &c. (and that according to their Land, &c.) And not tax him only whose Grounds lie next adjoining to the River, &c. For, *Qui sentit commodum, sentire debet & onus.*

Co. 5. 100. Note, That in all Cases of Taxing or Rating by these Commissioners, it ought to be proportionable and according to the Quality, and yearly Value of the Lands, Tenements, Rents, Commons, and Fishings of the Persons chargeable, and not according to the Quantity or Content thereof.

And the yearly Value shall be accounted as the Lands, &c. are of their own Nature, without respect to the Bettering or Impairing thereof by the good or bad Husbandry of the Owners or Occupiers thereof. See Co. L. 171, & 179. to such Purpose.

Co. 5. 108. Again, if the Owner of any Land be bound by *Prescription*, or otherwise, to repair the Bank of a River, Wall, or Sewer, &c. he ought to do it; yet if he be not able to repair it, or that there be other inevitable Necessity, or that there was no Default in the Party, but that the Banks, or Wall, &c. are broken or overflown by Tempest or unusual Overflowing of Waters, or the like, (which be the Acts of God, and which no Providence or Industry of him that is bound to the Reparations, could prevent). In these Cases the Commissioners ought not to charge him, only, with the Whole, but may, and in good Discretion ought, to charge and tax all such as have any Lands (or other Profits) there, in Danger, or subject to Loss, according to their Lands, &c.

But when one is bound by *Prescription*, or otherwise, to repair a Bank or Wall, &c. if there be any Default in him, and the Danger not inevitable, but that he alone may well repair it, the Commissioners may there charge him only to repair this: And if by his Default the Danger become inevitable, or that he alone is not able to repair it, whereby others are charged as aforesaid, every of them may have the Action of the Case against him, &c. and shall recover their Damages according to their Loss.

Co. 10. 130. Also, where a Man hath any Lands lying between the Sea, the River of *Thames*, or any other River, and his Neighbour's Grounds, and is bound by *Prescription*, or otherwise, to make or keep certain

Banks, or to scour certain Ditches or Sewers, between his said Neighbour and the said River or Sea, and doth not make, keep, amend, and scour the same, as he ought to do, by Reason whereof his Neighbour's Grounds are drowned, the Party so damaged shall have his Action of the Case against the other so making Default, &c. See *F.N.B.* 93. g. and 7 *H.* 4. 8, & 41.

Also, these Taxations ought to be particular, *sc.* upon every Owner ^{Co. 10.} or Occupier of Lands, Tenements, Rents, Commons and Fishings, &c. ^{139, & 143.} And not to be a general Sum in gross upon a whole Town. See more hereafter Tit. *Stock of the Shire.*

See Serjeant *Callis's* Reading upon the Statute of 23 *H.* 8. of Sewers.

C H A P. LXXXIX.

Sheep.

- §. 1. ^{Transporting.} IF any shall bring, deliver, fend, receive, or take or procure, &c. 8 *El.* 3. into any Ship or Bottom, any Rams, Sheep or Lambs, or any Manner of Sheep being alive, to be carried and conveyed out of England, Wales, or Ireland, or any the Queen's Dominions; the Party, his Aiders, Abettors, Procurers and Comforters, shall forfeit all his Goods, a Moiety to the Queen, the other Moiety to the Prosecutor in any Court of Record, and shall suffer Imprisonment for a Year without Bail; and at the Year's End, in some Market-Town, in the Fulness of the Market, on the Market-day, have his Left Hand to be cut off, and nailed up in the openest Place of such Market; and the second Offence is Felony.
- §. 2. Justices of Peace (*inter alios*) have Power to inquire of, hear and determine Offences against this Act. 8 *El.* 3.
- §. 3. ^{Keeping.} No Farmer shall keep above Two thousand Sheep at one Time, 25 *H.* 8. 13. upon Pain to forfeit for every Sheep above, 3 s. 4 d.
- It shall not extend to Lambs under a Year old, nor to Sheep *ibid.* coming by Executorship or Marriage; so as within a Year, he reduce them to Two thousand, nor to Sheep bequeathed by Will, nor to Sheep kept in a Man's own Demesnes.
- The Prosecution shall be within a Year, and Justices of Peace, as well by Oaths of twelve Men, as by Information of the King's Subjects. And such Process shall be made, as in Trespafs, and the Fines shall not be less than the Forfeitures. 25 *H.* 8. 13.
- Sixscore Sheep shall be accounted a Hundred. *Ibid.*

C H A P. XC. Vide L.

Sheriffs.

- §. 1. ^{One Just. to oversee the County Courts.} THE *Custos Rotulorum*, or the eldest Justice of the *Quorum* (in ^{11 H. 7. 15. P. 16, 18, 20.} his Absence) ought at the General Sessions after *Michaelmas*, to appoint two Justices of the Peace (the one being of the *Quorum*) to have

have the Oversight and Controulment of the Sheriff, Under-Sheriff, and other their Officers and Deputies, and the Inspection and Examination of their Books and Amerciaments, and for making of Estreats, &c. in their County Courts.

Also either of those two Justices of Peace, or any other Justice of Peace, ('by the Words of the Statute') upon Complaint of the Party grieved, may examine the Sheriff, Under-Sheriff, Shire-Clerk and Plaintiffs, concerning the Taking or Entering of Plaints in their said County Courts, and Books against the Statute, viz.

1. If any Plaints shall be entered in their Books, in any Man's Name, unless the Party Plaintiff be either present in Court in Person, or by a sufficient Attorney or Deputy, that is known to be of good Name and Behaviour.

2. If that the Plaintiff find not Pledges to pursue his said Plaintiff (sc. such Persons as are known in that County).

3. If the Plaintiff shall enter more than one Plaintiff, for one Trespass, Contract or Cause.

4. If the Sheriff, Under-Sheriff, &c. shall enter or cause to be entered any more Plaints than the Plaintiff supposeth he hath Cause of Action for against the Defendant.

And if the said Justices, or Justice of Peace, upon his or their Examination, shall find any such Default in the said Sheriff, Under-Sheriff, or Clerk, it shall stand for a sufficient Conviction, without any further Inquiry or Examination; and they shall forfeit forty Shillings to the King for every Default; the same to be recovered in the Exchequer.

And the same Justice or Justices who shall take the Examination, shall certify it into the Exchequer within a Quarter of a Year, upon Pain of 40s.

Also the said Justice of Peace may examine the Defaults of the Bailiff, Bailiff of the Hundred, for not warning the Defendants (in such Plaints) to appear, according to his Precepts received from the Sheriff or Under-Sheriff. And if upon Examination, the Justice shall find any Default in such Bailiff, in not warning the Defendant to appear, or otherwise in not executing his said Office, it shall stand for a sufficient Conviction, and the said Bailiff thereupon shall forfeit to the King for every such Default 40s. the same Examinations to be certified into the Exchequer as aforesaid.

Sheriffs, &c. shall make no Estreats to levy their Shire Amercia-Estreatments, until the said Justices (appointed at the General Sessions as aforesaid) have had the View and Oversight of their Books: And their Estreats shall be made by Indentures between the said Justices and the Sheriff and Under-Sheriff, and sealed with their Seals, the one Part to remain with the said Justices, and the other Part with the Sheriff, to be his Warrant to levy the Amerciaments.

The Bailiffs, &c. Collectors of the said Amerciaments shall be sworn by the said Justices, that they shall not take more Money than is forfeited, and contained in their said Estreats, sealed by the Justices as aforesaid.

Also the said Justices of Peace, or one of them, may examine the Default of the said Collectors, Bailiffs, and other Gatherers of the Sheriff's Amerciaments, whether they have taken and gathered any more Money than is forfeited and contained in their Estreats (sealed with the Seals of two Justices of Peace as aforesaid): And if upon

Examination the Justices or Justice shall find any such Default, That also without further Inquiry, shall stand for a sufficient Conviction. And the said *Collectors, Bailiffs, or other Gatherers of such Amerciaments*, thereupon shall forfeit to the King for every Default 40 s. The said Examination also (whether it be by one or two Justices) is to be certified into the *Exchequer*, as aforesaid.

*Two Ju-
stices.
Process.* Also the said Justices of Peace upon Suggestion or Information of the Party grieved, shall make like Process, as in an Action of Trespass against the said Sheriff, Under-Sheriff, or other their Officers (offending in any the Particulars aforesaid) to appear before them to answer the said Suggestion or Information. See what the Process is in the Title *Process*. 11 H. 7. 15.
p. 20.
Lam. 349.

§. 2. *Jurors.* 1. No Sheriff, Coroner, or other Officer, who hath Return of Writs, shall return any Juror dwelling out of any Liberty, without the true Addition of his Dwelling at the Time of his Return, or within a Year before, or some other sufficient Addition, by which he may be known; nor within any Liberty, without such Addition, as shall be certified to him by the Bailiff of his Liberty, or his Deputy, under his Hand. 27 El. 7.

2. No Bailiff of Liberty, or his Deputy, shall return any Juror, or deliver the Name of a Juror to the Sheriff, his Under-Sheriff, or Deputy, without such Addition, &c.

Ejfeats. 3. No Extract of Issues against a Juror, returned as aforesaid, shall be delivered out, renewed, or put in Ure, without the Addition put in the original Panel or Tales.

4. No Under-Sheriff, Bailiff, &c. shall collect any Issues so extracted of any other, than of such Person as by the Extract is right charged or chargeable with the Payment thereof.

Penalty. Upon Pain that the Clerk writing, &c. And every Person offending against that Act, shall forfeit to the King five Marks, and to the Party suffering Loss, five Marks.

Justices of Peace may inquire, hear, and determine thereof, as well within Liberties as without, and make Execution for the Forfeitures. 27 El. 7.

§. 3. *Jurors.* No Sheriff, &c. shall return a Juror, upon a Venire that cannot dispend 4 l. upon Pain to forfeit 20 s. By the Statute 4 & 5 Will. cap. 24. 'tis 10 l. per Annum. 27 El. 6.

Issues. Upon the first Distringas or Habeas Corpora, the Sheriff, &c. shall return for Issues upon every Juror 10 s. upon the second 20 s. upon the third 30 s. And upon every further Writ, to double the Issues, or forfeit 5 l.

False Summons. If any be returned summoned, where he is not summoned, and lose Issues for not appearing, the Sheriff, &c. in whose Default it is, &c. shall forfeit double his Issues.

Reward for sparing. If a Sheriff, &c. shall take, or have by himself, or any other any Reward or Profit for sparing, not warning, or not returning a Juror to try any Issue before any Justices; the Party offending shall forfeit 5 l. a Moiety to the Crown, the other Moiety to the Prosecutor in any Court of Record, by Action, &c. or Information. 27 El. 6.

§. 4. No Sheriff, for the Year that he is Sheriff, shall exercise the Office of a Justice of Peace for that County; but all Acts done that Year by him, by Virtue of the Commission of the Peace, shall be void. 1 Ma. 8.

The

‘ The Reason seems to be, for that the same Person cannot well exercise two Offices, especially these. For as a Justice of Peace, he is a Judge of Record, and hath Power in many Cases to command the Sheriff, so cannot command himself. But this Statute requires only the Forbearance of the Execution of his Office for that Year; and he may continue in the Commission of the Peace.

‘ Sheriffs, &c. shall take no more for the *Execution of any Extent*, ^{§. 5. Fees for Execution.} or Execution upon Body, Goods or Lands, than *twelve Pence in the Pound for the first Hundred Pounds, and six Pence for every twenty Shillings more*; if he do, he shall lose to the Party his treble Damages: And for every Time he shall offend 40*l.* a Moiety to the King, the other Moiety for the Prosecutor, by Plaint, Action, Bill, Suit or Information, &c. 27 *El.* 4.

‘ By the general Words of which Act, it seemeth, That an Information or Bill lieth before the Justices of Peace in Sessions.

‘ Also if the Debt be 160*l.* there shall 100*s.* Fee be paid for the 100*l.* and 30*s.* for the 60*l.* Residue. *Latch*, p. 19, 51.

‘ And the Proviso of the Statute, That it shall not extend to Fees for any Execution in a Corporation, shall be intended of *Actions* ^{Corporation.} arising within the Corporation: And for which, the Action is brought in the Corporation Court, and Judgment there had, and not where the Sheriff upon any Process out of a Superior Court enters a Corporation, and doth Execution. *Latch*, p. 19, 51. See *hic postea*.

27 *El.* 12. ‘ Every Under-Sheriff, Bailiff of Franchise, Deputy and Clerk of every Sheriff and Under-Sheriff, and other Persons that take on them to impanel or return any Inquest, Jury or Tales; or intermeddle with Execution of Process in any Court of Record, shall before they meddle with the Execution of such Office, or Execution of Process, take the Oath of Supremacy, 1 *El.* 1. And this Oath *Mutatis mutandis*. ^{§. 6. Oath of Sheriff and Bailiffs.}

27 *El.* 12. **I** A. B. shall not use or exercise the Office of Under-Sheriff corruptly, ^{By the Statute 3 Geo. cap. 15.} during the Time that I shall remain therein; neither shall or will accept, receive or take, by any Colour, Means or Device whatsoever, ^{instead of} or consent to the Taking of any Manner of Fee or Reward of any Person or Persons, for the Impanelling or Returning of any Inquest, ^{there is another} Jury or Tales, in any Court of Record for the Queen; or between ^{Form en-} Party and Party above two Shillings, or the Value thereof; or such Fees as are allowed and appointed for the same, by the Laws and Statutes of this Realm; but will, according to my Power, truly and ^{joined to be taken by the Sheriffs, except the Under-Sheriffs in Wales and Chester. See} differently, with convenient Speed, impanel all Jurors, and return all such Writ or Writs touching the same as shall appertain to be done by my Duty or Office, during the Time I shall remain in the said Office. ^{Wales and Chester. See} So help me God.

the Statute: But the Under-Sheriffs in Wales and Chester shall take the old Oath.

27 *El.* 12. ‘ And if any Person shall intermeddle, &c. not having taken the said Oath, he shall forfeit 40*l.* A Moiety to the King, and the other Moiety to the Prosecutor. ^{Forfeiture.}

‘ And the Justices of Peace, in their Sessions, have Power to hear and determine the Defaults against that Act, as well by Presentment and Information as Indictment; and, upon Conviction, to award

ward Execution for the Forfeitures, by *Fieri facias*, *Attachment*, *Capias* or *Exigent*, and the *Custos*, &c.

The *Custos Rotulorum*, or any two Justices of the Peace, the one ^{27 El. 12.} being of the *Quorum* (*Ex Officio*, and without any Commission to ^{P 32, 33.} that Purpose to them to be directed) may take the Oaths of the Under-Sheriff of their County, his Bailiffs, Deputies, Clerks and other Officers, before they shall exercise their said Offices.

sc. { The Oath of Supremacy.

{ The Oath for the true Exercising of their Offices.

But special Bailiffs made for the serving of Process, are not to be sworn by this Statute, as Mr. *Crompton* reporteth, and saith, *That it was so adjudged in the King's Bench*. And yet the Words of the Statute are, That every Person which shall have Authority, or take upon him to intermeddle with Execution of Process, &c. shall receive and take the said Oaths, *Crompt. 76, & 103.* And so it was resolved *Mich. 7 Car. 1. Jones's Rep. 249.* And the same Matter was also in Question lately in the *King's Bench*, but not resolved as I remember.

§. 7. Sheriffs, Under-Sheriffs, their Bailiffs or Ministers shall not make out any Process on any Indictments or Presentments in their Leets or Turns, but shall deliver the same to the Justices of Peace at their next Sessions; or in Default thereof, shall forfeit 40*l.* And the Justices of Peace may proceed thereon, as if such Indictment or Presentment were taken before them, and may arraign and deliver the Parties indicted; and such as be indicted of Trespass shall make such Fine as they in their Discretions shall think fit; and the Estreats shall be inrolled and delivered by Indenture. And if the Sheriff, &c. shall arrest, &c. any Person or levy such Amerciament without such Authority, he shall forfeit One hundred Pounds. 7 *E. 4. 2.*

He shall take no more than 12*d.* Poundage for executing an *Habeas facias Possessionem vel Seisinam*, where the whole yearly Value of the Lands doth not exceed 100*l.* and but six Pence where 'tis under that Value.

He shall not take Poundage for executing a *Ca. sa.* or upon charging one in Execution for any greater Sum than the real Debt, which Sum the Plaintiff shall mark and specify on the Back of the Writ, before it shall be delivered to the Sheriff to execute; he or his Bailiff taking more, are guilty of Extortion, and shall forfeit double the Sum extorted and treble Damages to the Party grieved, upon Proof before the Judge of that Court out of which the Writ issued in such summary Way as he shall think meet, and 200*l.* to the Crown and to the Prosecutor; to be recovered in the Courts at *Westminster*, so as the Prosecution be within two Years after the Offence.

C H A P. XCI.

Ships.

Several of the Penalties given by the Statute 12 Car. 2. 18. for Offences against that Statute are, and may be recovered by Information in any Court of Record. And it seems the Sessions being so, they may there be recovered: For which see the Statute at large.

12 Ann.
cap. 18.

Where a Ship is in Distress, and any Person enters without Leave of the Commander (except an Officer of the Customs, or a Constable, or one by his Order) or he who molests Persons assisting, or endeavours to hinder the Saving the Ship or Goods, or when saved, shall deface the Marks of any Goods before they are entered in a Book, shall, within twenty Days after, make double Satisfaction to the Party grieved, at the Discretion of the two next Justices, or in Default thereof be sent by the said Justices to the House of Correction, there to be kept to hard Labour for twelve Months.

They who assist Ships in Distress, and preserve them or their Cargoes, shall within thirty Days afterwards be paid a reasonable Reward for their Service by the Commander, and in Default thereof the Ship shall remain in the Custody of the Officer of the Customs, till they be reasonably gratified; and if they cannot agree, then the three next Justices named by the said Officer, shall settle the *Quantum* to be paid to each Assistant.

And where no Person claims the Goods, the chief Officer of the next Port must make Application to Three of the Justices, who are to put him or some responsible Person in Possession of the Goods, taking an Account thereof in Writing, to be signed by the said Officer; and if they are perishable, then to be sold presently, or else kept a Year.

Shoemakers. See Labourers.

C H A P. XCII.

Silk-throwing.

NO Person shall use, exercise, continue or set up the Trade of a Silk-thrower, unless he is or shall be Apprentice to that Trade, or have served seven Years Apprenticeship thereunto, upon Pain to forfeit forty Shillings for every Month; one Moiety to the King, the other Moiety to the Prosecutor, by Action of Debt, Bill, Plaint or Information; or by other lawful Means (*inter alios*) before the Justices of the Peace at their Quarter-Sessions. 14 Car. 2. 15.

If any Silk-winder and Doubler imbezil, pawn or detain any Silk delivered to them to wind or double, every Winder or Journey-man

By the Statute 8 & 9 Will. 3. cap. 36. sect. 6. this extends to all Persons who shall imbezil Silk, or pawn, sell, or detain it, being delivered to any one who manufactures it, their Agents, Journeymen, Warpers or Winders.

man so offending, and the Buyers and Receivers thereof, being convicted by Confession or the Oath of one Witness before any Justice of Peace of the County or Liberty; or if within a Town-corporate, before the chief Officer of the same, who may hear and determine, and give the Party damnified such Satisfaction for their Loss, Damage and Charges, as they shall order, so as no more be awarded than the Party is damnified, and hath expended in looking after it. And if the Party be not able, or do not make Recompence in fourteen Days after Conviction, he shall for the first Offence be apprehended and whipped, or set in the Stocks in the Place where the Offence was committed, or some Market-Town of that County, near thereunto; and for the second Offence, shall be punished as before. *Ibid.*

§. 3.
Employment.

The Receivers and Buyers of Silk shall be subject to the like Punishment as the Person imbezilling. *Ibid.*

Any Freeman of the Company of Silk-throwers may set on work any native Subjects of his Majesty, whether Men, Women or Children, to turn the Mill, tie Threads, double Silk and wind Silk, as formerly, although they have not served as Apprentices to that Trade by seven Years. 14 Car. 2. c. 15.

C H A P. XCIII.

Skinners.

NO Persons, using the Trade of Merchandise, or any other Trade, shall dress, or cause, &c. in their Houses, or by any Workmen, not using the Trade of a Skinner, any Black Coney-skins, nor transport, or cause, &c. Nor pack, ship or lade, to that Intent, any black Coney-skins of the Breed of *England*, unless the same be tawed and perfectly wrought, dressed and packed by Skinners or Tawers, under them, according to the Science of Artizan Skinners, upon Pain to forfeit the same, or the full Value thereof. 3 Jac. 9.

No Merchant shall buy, bargain or contract for, or cause, &c. any Coney-skins or Lamb-skins, called *Morkins*, of the Breed of *England*, or being here under 1000 black Coney-skins, or 3000 grey Coney-skins, or 2000 Lamb-skins, called *Morkins*, at one Time, and not by Parcels, except of Artizan Skinners; nor shall sell the same again to any Persons in this Realm, in small Parcels, viz. Under these Numbers of each, unless to an Artizan Skinner, upon Pain to forfeit the same, or the full Value.

No Person shall retain or keep any Servant, Journey-man or Apprentice, to work therein, except the Person using that Trade hath served seven Years therein, and do use the Trade of a Skinner, upon Pain to forfeit double the Value of the Skins or Wares wrought. 3 Jac. 9.

A

‘ A Moiety of the Forfeitures to the King, the other Moiety to
 ‘ the Seizor, or that shall sue for the same by Action of Debt, Bill,
 ‘ Plaintiff, or Information in any Court of Record. 3 Jac. 9.

Smuglers.

3 Geo.
 cap. 18.

ANY Persons found passing knowingly with any foreign Goods,
 landed without due Entry and Payment of the Duties from any
 of the Coasts, or within twenty Miles thereof, and shall be
 more than five in Company, or shall carry any offensive Weapons, or
 wear any Disguise when passing with such Goods, or shall forcibly
 resist any Officer of the Customs or Excise in seizing Run-Goods, shall
 be guilty of Felony, and be transported for seven Years; and if he
 return before that Time, 'tis Felony without Benefit of Clergy.

C H A P. XCIV. *Vide* LII.

Soldiers.

Crom. 76.
 b.
 2 Ed. 6. 2.
 P. Just. 84.

EVERY Justice of Peace of the County, where any Soldier, ^{§. 1.}
 which hath served the King in his Wars, shall be found, which ^{Armour.}
 hath sold, given, purloined, or put away, &c. any Horse or Harness
 (wherewith he was set forth, or which was after appointed to him by
 the Lieutenant or Captain, &c.) upon Complaint and due Proof of
 the Offence to be made (by the Owner, his Executors or Administra-
 tors) to any such Justice, shall by the said Justice be committed to
 Ward, there to remain without Bail, until he has satisfied the Party
 grieved, his Executors or Administrators; for such Horse, or Harness,
 &c. unless he bring with him, before the same Justice, sufficient Te-
 stimony from his Captain, &c. in Writing under his Seal, testifying,
 that the said Horse or Harness, &c. was lost in the King's Service a-
 gainst the Will of that Soldier; or was taken by his Captain, &c.
 from him, and appointed to some other to serve withal (except the
 same Soldier were imprisoned for the same Offence before, by his
 Lieutenant or Captain, &c. and made Restitution.)

The next Justice of Peace to the Place of Landing of any poor ^{§. 2.}
 Soldier, Mariner, or Seafaring-man suffering Shipwreck, may make ^{Licence.}
 them a Licence to pass to the Place where they are to repair, &c.
 See hereof in the Title *Rogues*.

Every Parish shall be charged weekly to pay a Sum of Money ^{§. 3.}
 towards the Relief of *sick, hurt and maimed Soldiers*, that shall ^{Tax.}
 lose their Limbs or disable their Bodies, having been pressed, and in
 Pay for the King's Service, as by the major Part of the Justices of
 Peace, in their next Quarter-Sessions after *Easter*, shall be appoint-
 ed, so as no Parish be rated above ten Pence, or under the Sum of
 two Pence weekly; and so, as in any County, where there are a-
 bove fifty Parishes, the total Sum exceed not six Pence for every
 Parish by the Week.

The Mayor, Aldermen, and Recorder of *London*, may on eve-
 ry Parish there, set and tax such reasonable Sums for the said Re-
 lief as they shall think fit and convenient; so as the same exceed not

U u

weekly

‘ weekly three Shillings but of any Parish : And so as in the Total
 ‘ the same exceed not three Shillings weekly, nor be under twelve
 ‘ Pence weekly out of every Parish one with another.

‘ Which Sums shall be assessed by the Parishioners amongst them-^{45 El. 3. 8.}
 ‘ selves, if they can agree, or in Default thereof, by the Church-war-^{c. 17.}
 ‘ dens, and Petty Constable of the Parish, or the more Part of them.
 And in Default of the Parishioners, Church-wardens, and Constables
 (that shall not assess the ‘ Tax imposed upon the Parishioners by the
 Justices at their *Easter Sessions*, towards the Relief of disabled Sol-
 diers and Mariners) any Justice of Peace dwelling in the Parish, (or
 if none dwell there) in the Parts next adjoining, may assess the same:
 And the same Justice of Peace may also in Default of the Church-
 wardens and Constables, levy the same by Distress and Sale of the
 Goods of the Party so refusing or neglecting, rendring to the Party
 the Overplus, &c.

§. 4. ‘ Which Church-wardens and petty Constables shall collect it, and^{43 El. 3.}
Payment. ‘ pay it to the High Constable of that Division, ten Days before eve-
 ‘ ry Quarter-Sessions. Which High Constable shall, at the Sessions,
Treasurers ‘ pay the same to two Justices, or one of them; or to two such Per-
 ‘ sons, or one of them, as shall be elected by the more Part of the
 ‘ Justices, who shall continue only for one Year, and shall give up an
 ‘ Account the *Easter Sessions*, or within ten Days, to the next elected.

§. 5. ‘ If Church-warden or petty Constable, or his Executors, or Ad-^{43 Eliz. 3.}
Failure of ‘ ministrators, shall fail of Payment, he shall forfeit 20s. If High
Payment. ‘ Constable, &c. fail of Payment, he shall forfeit 40s. to be levied
 ‘ by Distress and Sale by the Treasurer.

Treasurers ‘ If the ‘Treasurer, his Executors or Administrators, fail to give up^{43 El. 3.}
Account. ‘ his Account, or be negligent in his Charge, the major Part of the
 ‘ Justices in Sessions, may set a Fine not exceeding 5 l.

§. 6. ‘ Every Soldier so disabled, being in the King’s Pay, or returning^{43 El. 3.}
To whom ‘ from Sea, shall, if able, repair to the Treasurer of the County,
Application ‘ where he was pressed, or if not pressed, to the ‘Treasurers of the
is to be ‘ County where he was born, or last inhabited, by the Space of three
made. ‘ Years at his Election: And if not able to travel to the Treasurer of
 ‘ the County, where he shall first arrive, and shall bring a Certifi-
The Certi- ‘ cate under their Hand and Seal of the General of the Camp, or Go-
cate. ‘ vernor of the Town, under which he served; and of the Captain of
 ‘ the Band, or his Lieutenant; and in their Absence, from the Mar-
 ‘ shal or Deputy; or from the Admiral or General at Sea; or from
 ‘ the Captain of his Ship, containing a Particular of his Hurts and
 ‘ Services: Which Certificate shall be allowed by the General Mu-
 ‘ ster-Master, Resident in *England*, or Receiver General of the Mu-
 ‘ ster-Rolls, the Treasurer and Comptroller of the Navy under his
 ‘ Hand; upon which Certificate the ‘Treasurers shall give him a pro-
 ‘ portionable Relief until the Sessions: At which Time, the Justices,
 ‘ under their Hands, to make a Grant of the same for his Life, if it
 ‘ be not altered, and the ‘Treasurer shall pay it; so as to any one
 ‘ that hath not born Office in the Wars, be not assigned above 10 l.

The Sum. ‘ nor to any one that hath born Office above 15 l. nor to a Lieutenant
 ‘ above 20 l.

Alteration. ‘ The Justices of Peace may in their General Quarter-Sessions, up-^{43 El. 3.}
 ‘ on just Cause alter, diminish or revoke the same from Time to
 ‘ Time.

‘ If

- 43 El. 3. ' If such maimed Soldiers and Mariners shall arrive in a County, §. 7.
 ' far remote from the Place where they are to have their Pensions, *Distance.*
 ' the Treasurers of the County where they arrive, may give them
 ' Relief for their Journey, upon their Certificate, with a Testimoni-
 ' al; and so the Treasurer of the next County, until they come to
 ' the Place where they are to have their Pension settled.
- 43 El. 3. ' The Treasurers shall keep a Book of all Sums they levy, and of §. 8.
 ' the Persons to whom they give any Relief, and preserve every Cer- *Accounts.*
 ' tificate: And if any Treasurer shall wilfully refuse to give, or di-
 ' stribute any Relief according to that Act, the Justices of Peace in
 ' their Sessions, by their Discretions may fine such Treasurers, to be
 ' levied by Distress and Sale, to be prosecuted by any two of them
 ' whom they shall authorize.
- 43 El. 3. ' If such Soldier or Mariner be taken begging, or shall counterfeit §. 9.
 ' a Certificate, he shall be punished as a Rogue. *Begging.*
- 43 El. 3. ' The Surplusage of such Stock shall be ordered and bestowed by *Surplusage*
 ' the more Part of the Justices in their Quarter-Sessions, by their
 ' Discretion to such charitable Uses, in such Manner as is limited by
 ' the Statutes for the Poor, and against Rogues.
- 43 El. 3. ' The Forfeitures of every Treasurer, Collector, Church-warden *Penalties.*
 ' and other Officers by that Act shall be employed as the Money to
 ' be levied, and the Overplus is directed, or may be reserved as a
 ' Stock for Soldiers and Mariners.
- 43 El. 3. ' Justices of Peace in the County shall not meddle as to this Mat- *Corporati-*
 ' ter in any City, Borough, Place or Corporation, where is any Ju- *ms.*
 ' stice of Peace; but the Justices of Peace, Mayors, Bailiffs and o-
 ' ther Head Officers of Cities, Boroughs, Places and Towns Corpo-
 ' rate, where there is any Justice of Peace, may put in Execution
 ' the said Act in all Things, as Justices of the Peace of the County
 ' may do.
- 43 El. 3. ' Relief shall be given to such Soldiers and Mariners out of the §. 10.
 ' Stock of the County out of which he was pressed; but if that Tax- *Who to*
 ' ation shall be before employed, or they shall not be pressed Men, *be settled.*
 ' then out of the Place where they are born, or last inhabited by
 ' the Space of three Year, at his or their Election.
- 43 El. 3. ' This Act was to continue to the End of the next Session of Par- *Continu-*
 ' liament. And 21 Jac. c. 28. was continued, and by 3 Car. 2. c. 3. *ance of the*
 ' was further continued: And now by the Statute of 17 Car. 1. c. 4. *Act.*
 ' continued until some other Act shall be made for the Continuance
 ' or Discontinuance thereof.
- 14 Car. 2. c. 9. ' For Relief and Reward of such Persons as have lost or hazarded §. 11.
 ' their Lives, Limbs or Fortunes, in the Service of the King or his Fa- *Additional*
 ' ther, every Parish shall be charged weekly to the Payment of such *Levy.*
 ' a Sum as they have been rated by 43 El. c. 3. And likewise such
 ' further Sum as the Justices of Peace in their Quarter-Sessions shall
 ' adjudge meet to be assessed on every Parish or Chapelry that hath
 ' distinct Officers, so as such additional Sum exceed not 2 s. 6 d. nor be
 ' under 3 d. in any Parish in each Week, to be levied and paid in such
 ' Manner, and under such Penalties as directed by 43 El. c. 3.
- 14 Car. 2. c. 9. ' Every Officer, Soldier or Mariner, maimed, aged, indigent or dis- §. 12.
 ' abled in Body during the late Wars, or that are so impoverished by *To whom.*
 ' their Sufferings under the usurped Powers, that they are desti-
 ' tute of a competent Subsistence, and have continued faithful to their
 ' Trust, and no Ways deserted the same, shall repair to the Place
 ' where

where he was last settled, before he took up Arms, with a Certificate of his Service and Hurts, under the Hand of his Captain or commissioned Officer, and to the two next Justices of the Peace of that County, who shall examine the Truth of that Certificate by the Oath of the Party and such Witnesses as he shall produce, and assign him Relief until the next Quarter-Sessions, where a yearly Pension shall be settled under such Power of Revocation, as is appointed by 43 *El. c. 3.* And if the Captain or Officer be dead, two Justices upon Request, by Persons of Credit, may give such Relief as in Cases of Examination. It seems hereby, that where such Certificate of the Officer cannot be had, the Justices of Peace in Sessions have no Power to grant any Pension. *Quere.*

§. 13. And where any have died or suffered Death in that Service over 14 *Car. 9.* and besides the Parochial Relief (who are thereby required to have of them a special Regard) the Treasurers shall pay the Widow and Orphans of the deceased such Relief as the two next Justices shall think fit, which shall be paid out of the Surplusage of such Stock, after Pensions paid.

§. 14. *Musters.* If any, commanded to be mustered, shall absent himself without lawful Impediment; or coming, shall not bring his best Furniture, Array or Armor, shall be imprisoned ten Days without Bail, unless he agree to pay a Fine of 40 s. to the Queen; which is to be estreated into the *Exchequer* by the Commissioners, &c. 4 & 5 *Ph. & Ma. c. 3.*

§. 15. *Bribes.* If any Person authorized to muster or levy Men in War, or for the Defence of the Kingdom, shall take or receive any Money or Reward to spare any Person, shall forfeit ten Times so much as he shall take.

Pay. If any Captain or other, having Charge of Soldiers, shall for any Advantage license a Soldier to depart, he shall forfeit ten Times the Thing taken. And if he shall not pay the Soldier his Pay within ten Days after he shall receive it, he shall pay the Soldier treble so much.

The Moiety of Forfeitures (except Pay) to the Queen, the other Moiety to the Prosecutor, in any Court of Record, by Information or otherwise.

The Justices of Peace in Sessions may by Presentment or Indictment hear and determine the Offences, and upon Conviction may award the Party to Prison till Payment of the Forfeitures. A Moiety whereof to the Party that gives Evidence, if Conviction be upon Evidence; otherwise the whole Forfeiture to the Queen. 4 & 5 *Ph. & M. 3.*

§. 16. *Work.* If any poor Soldier or Mariner, coming from or beyond the Seas, shall repair to his Place of Birth, &c. and cannot there get Work, then upon his Complaint any two Justices of Peace near the said Place shall take Order (by their Discretion) to set him to work; and, for want of Work, the said Justices shall tax the whole Hundred (by their Discretion) for his Relief till sufficient Work may be had.

A maimed Soldier came to the County for Relief at the Sessions, but because it appeared that he was not settled, but vagrant at the Time of his being prest, he was not relieved by Pension from the County Stock, but sent to the Place of his Settlement. Ord. 2. Oct. 4. Car. Lib. Sess. pa. Mid. 13 Car. 2. 6. See the several Acts concerning the Militia; viz. 14 Car. 2. c. 3. And 15 Car. 2. cap. 4. St. 3. 10 & 11 Willi. cap. 11. 12 Anna cap. 13. 1 Geo. cap. 11. 4 Geo. cap. 4. 39 *El. 17. P. Mar. 8.*

^{a & 5 W. & M. c. 13} Any Person being falsely mustered, upon Oath thereof made before ^{Soldiers.} the next Justice of Peace by two Witnesses, or upon Certificate under ^{Falsely Mustered.} the Hand of the Commissary of the Musters, or chief Magistrate of the Place, where such Soldier is quartered, made to such Justice, shall be committed to the House of Correction for ten Days, and have his Ear cut off by the Gaoler thereof.

Any Person lending an Horse to be mustered, not belonging to the ^{Horses.} Troop, such Horse shall be forfeited to the Informer, if it belong to the Person lending; if not, the Lender shall forfeit 20*l.* upon Oath made by two Witnesses before the next Justice of Peace.

^{Ibid.} Constables, Tithingmen, &c. may quarter Soldiers in Inns, Livery-Stables, Ale-Houses, Victualling-Houses, Houses selling Brandy, ^{Quartering of Soldiers.} Strong-Waters, Cyder or Metheglin by Retail to be drunk in their Houses; but in no private Houses. Nor more Billets be ordered than there are effective Soldiers present to be quartered. The Magistrate billeting any Officer or Soldier in any private House without the Consent of the Occupier, such Occupier shall have his Remedy at Law to recover his Damage sustained hereby.

Any Military Officer quartering Soldiers otherwise than is hereby ^{Penalty.} allowed, or using any Compulsion upon any Civil Officer to deter him from performing his Duty herein, upon Conviction by the Oaths of two Witnesses, before two or more Justices of Peace, and the said Justices Certificate thereof to the Judge Advocate, who is hereby obliged to certify the same to the next Court Martial, such Officer shall be *ipso facto* cashiered, and disabled to hold any Military Employment.

^{Ibid.} Officers and Soldiers so billeted, shall pay such reasonable Prices as shall be appointed by the Justices of Peace in their Quarter-Sessions; ^{Rates to be set by the Justices.} and the Justices of Peace are required to set Rates for Provisions for one or more Nights in their Marching, and for the first Night only in Places appointed for their Residence.

^{Ibid.} No Commissary shall muster any Forces within *Westminster* or *Westminster and Southwark*, and Liberties thereof, but in the Presence of two Justices of Peace, not being Officers in the Army, under Penalty of being cashiered.

^{Ibid.} Justices of Peace required by Order of his Majesty, shewn to them by any Officer, &c. then marching, shall issue out their Warrants to the Constables, &c. to make such Provisions of Carriages, as is mentioned in the Warrant, allowing sufficient Time that the Neighbouring Parts may not always bear the Burden; and the Officer demanding such Carriages, shall pay to the Constable to whom the Warrant is directed, 8*d.* for every Mile, any Waggon with five Horses shall travel laden; and 8*d.* for every Mile any Waggon with six Oxen, or four Oxen and two Horses shall travel laden; and 6*d.* a Mile for a Cart with four Horses, and so in Proportion; and if any Officer shall constrain any Carriage to travel more than one Day's Journey, or not discharge them in due Time for their Return, or shall suffer his Soldiers or Servants (except sick and wounded) or any Women to ride in such Carriage, or shall force any Constables, &c. by Threats to provide Saddle-horses, or shall force Horses from the Owners, he shall forfeit 5*l.* for every such Offence, Proof thereof being made upon Oath before two Justices of Peace, who are to certify the same to the Pay-master General, who shall pay the said Sum of 5*l.* according to the Appointment of such Justices, and deduct it out of such Officers Pay. ^{Penalty of Offenders.}

If

Women not
to be quar-
tered.

If any Officer Military or Civil, authorized to quarter Soldiers, shall quarter the Wives, Children or Maid-Servants of Officers or Soldiers in any House against the Owners Consent, such Offender, if he be an Officer or Soldier of the Army, shall, upon Proof thereof made to the Commander in Chief of the Army, or the Judge Advocate, be cashiered: If a Civil Officer, he shall forfeit 20*s.* to the Party grieved, upon Proof made to the next Justice of Peace, to be levied by Distress and Sale of Goods, rendring the Overplus.

Game.

If any Officer or Soldier shall without Leave of the Lord of the Manor under Hand and Seal take or destroy any Game, and shall be convicted thereof before a Justice of Peace, he shall forfeit, if an Officer, 5*l.* to be distributed among the Poor of the Parish: And every Officer commanding in Chief, shall forfeit for every such Offence committed by any Soldier under his Command 10*s.* to be distributed as aforesaid; and for Default of Payment within two Days after Conviction, and Demand thereof made by the Constable or Overseer of the Poor, the Officer so refusing or neglecting is hereby declared to have forfeited his Commission.

The Act made in last Session, entituled, *An Act for punishing Officers and Soldiers who shall mutiny and desert their Majesties Service, and for punishing false Musters, and for Payment of Quarters*, shall continue in Force until the first of March, 1694.

Not to be
listed with-
out or a-
gainst his
Consent.

No Person that shall be listed for the Land Service, after the first of March, 1693. shall be esteemed a listed Soldier, or be subject to any of the Pains and Penalties of this Act, or any other Penalty for his Behaviour as a Soldier, that shall not have been brought before a Justice of Peace, not being an Officer in the Army, or Chief Magistrate of some City or Town Corporate, or High or Petty Constable in the Hundred, &c. where the Person shall be listed, and before such Justice, Magistrate, &c. declare his free Consent to be listed as a Soldier before he be listed or mustered in any Muster-Roll of a Regiment, Troop or Company: And every Military Officer offending herein, shall incur the like Penalty, as is by the said continued Act to be inflicted upon any Officer for making a false Muster.

The Act made 4 & 5 *W. & M.* entituled, *An Act for punishing Officers and Soldiers who shall mutiny or desert, &c.* And also one other Act made in the last Sessions for continuing the same for one Year, to be continued to the 10th of April, 1696.

Bribes for
excusing
Quarters.

Any Officer who shall take, or knowingly suffer to be taken, any Money of any Inn-keeper, or Publick House, for excusing of Quarters, or Diet, &c. such Officer upon Complaint and Oath made against him to a Justice of Peace within five Days after, shall be bound in a Recognizance not exceeding 40*l.* to appear in the *King's Bench*, there to answer such Action as shall be brought against him for the said Offence, and if Judgment shall be given for the Plaintiff, he shall recover double Damages and double Costs, and the Defendant shall be cashiered; but if for the Defendant, the Plaintiff shall pay the Defendant the like Costs.

Justice ne-
glecting to
be present
at Musters

If any Justice of Peace in *London, Westminster*, or the Liberties thereof, shall upon Request made, neglect or refuse to be present at any Muster to be made by Virtue of this Act, he shall forfeit 5*l.* to any Person who shall sue for the same in any Court of Record at *Westminster*, or at the Assizes. Such Action to be prosecuted within six Months.

6 & 7 W. 3. c. 8. No Person listed for Land-service after the 10th of April, 1695. shall ^{Soldiers listed.} be esteemed a listed Soldier, subject to the Penalties of this Act, though he declares his free Consent to be listed as a Soldier before a Petty Constable, any Thing in the last recited Act notwithstanding.

Ibid. The Pay-master shall upon the Certificates of the Justices of Peace ^{Paymaster to pay Quarters.} (as in the first Act above directed) pay Money due for Quarters to any Inhabitant, Innholder, &c. out of the full Subsistence due and payable to the Persons concerned, under the Penalties in the said Act provided.

7 & 8 W. 3. c. 23. The Act made 4 & 5 W. & M. entituled, *An Act for punishing Officers and Soldiers who shall mutiny or desert, &c.* shall continue in Force from the 10th of April, 1696. to the 10th of April, 1697. And the Act of 5 & 6 W. & M. for punishing Officers and Soldiers, &c. to continue from the 10th of April, 1696. to the 10th of April, 1697. And the Act made 6 & 7 W. 3. for punishing Officers and Soldiers, &c. shall continue in Force from the 10th of April 1696. to the 10th of April, 1697. ^{Acts continued.}

Ibid. If any Person shall harbour, conceal or assist any Deserter from his Majesty's Service, knowing him to be such; or shall buy, exchange, ^{Harbouring Deserters, &c.} or otherwise receive any Arms, Cloaths, Caps, or other Furniture belonging to the King, from any Deserter, upon any Account whatsoever, the Person so offending shall forfeit for such Offence 5 l. which, upon Conviction at the Quarter-Sessions, shall be levied by Distress, by Warrant of two or more Justices, upon the Goods and Chattels of such Offender, one Moiety to the Informer, and the other to the Officer to whom such Deserter did belong. But if any Person so prosecuted shall be found Not guilty, he shall recover treble Costs.

This Act hath been continued from Time to Time, and is to continue from the 24th of March, 1723. to the 25th of March, 1725.

C H A P. XCV.

Spices.

1 Jac. 16. **A** L L Spices, Wares, Drugs and Merchandizes, garbleable, viz. ^{§ 1.} Pepper, Cloves, Mace, Nutmegs, Cinnamon, Ginger, Long-pepper, Worm-seeds, Cummin-seeds, Anniseeds, Coriander-seeds, Biny-pepper, Almonds, Dates, Galls, Gums of all Kinds garbleable, Spicknard, Galingal, Turmerick, Setwell, Cassia Fistula, Guinny-pepper, Senna, Barberies, Rice, Erius, Stavifaker, Calamus, Fenu-greek, Cassia Lignum, Grains, Caraway-seeds; and all other Spices, Drugs, Wares and Merchandizes garbleable, that have or ought to be garbled, &c. in London and the Liberties, shall for the usual Fees be garbled, &c. by the Garbler, his Deputy or Servant, before the same be sold, upon Pain of Forfeiture thereof, or the Value thereof sold.

And if they be afterwards mixed with Garbles, &c. the same so mixed shall be forfeited, or the Value thereof. ^{§ 2.}

The Garbler of London, &c. his Deputy or Assigns, may enter in ^{§ 3.} the Day-Time into any House, Shop, Warehouse, &c. to see if the Wares, &c. be garbled, &c. if ungarbled, to cleanse them, &c. A Moiety of the Forfeitures to the King, the other to the Prosecutor in any Court of Record, &c.

Squibs.

Squibs.

ALL Persons are prohibited to make, utter, sell, or offer or expose to Sale any Squibs or Fireworks, or to suffer any Squibs to be cast, thrown, or fired out of their Houses or Lodgings, or any Part thereof, or Places adjoining into the Streets, or to throw, cast, or fire, or to be aiding or assisting thereunto, if they do, 'tis a *Common Nuisance*.

And if any Person make, or cause to be made, give, sell, utter, or offer or expose to Sale any Squibs, &c. he forfeits 5*l.* to the Poor and the Prosecutor, being convicted before a Justice upon Confession or Oath of two Witnesses, and to be levied by Distress and Sale, &c.

Permitting any Squibs to be cast, thrown, or fired out of their House, Shop, or Habitation into any Street, forfeits 20*s.* to be levied and divided as afore, &c.

And he who throws them, or is aiding and assisting in throwing them forfeits the like Sum, to be divided as aforesaid; and if not immediately paid to the Justice, upon Conviction, shall be committed to the House of Correction, there to be held to hard Labour for a Month, unless he shall sooner pay the Money.

Stamp-Duties.

BY the Statute 9 *Anna* it was made *Felony* to counterfeit or forge the Stamps, and without Benefit of Clergy.

Every Commissioner and Officer acting in collecting the Stamp-Duties, is to take an Oath mentioned in that Statute before two of the Commissioners or before one Justice. See the Form of the Oath there; and the Justice is to give the Officer *gratis* a Certificate of his having taken the Oath.

Causing or Procuring to be forged or counterfeited any Stamp or Mark, resembling any Mark, or Stamp, made or used in Pursuance of this Statute, or any other relating to the Stamp-Duties, or causing or Procuring any Vellom, Parchment, Paper, Cards, or Dice to be marked or stamped with such counterfeit Stamps, this is Felony without Benefit of Clergy.

*Surrender
of a Copy-
hold.*

Writing or Printing any *Surrender* (except to the Use of a Will) or *Admittance of or to any Copyhold Estate in Great Britain or Wales* or any Grant or Lease by Copy of Court-Roll, or any Matter directed to be stamped by the Statute 10 *Anna* cap. 19. or selling or exposing to Sale any Pamphlet or News-Paper, excepting such as exceed one whole Sheet of Paper before the same, shall be stamped; the Offender forfeits 10*l.* with full Costs for every Offence to the Crown and the Prosecutor.

*Steward of
a Manor.*

Every Steward of a Manor, or his Deputy Offending, and being convicted over and above the said Forfeiture, shall loose his Place; and the Writing shall not be good, or given in Evidence until 5*l.* shall be paid, as also the 10*l.* before mentioned; and a Receipt thereof

thereof be produced under the Hand of the Receiver General of the Stamp-Duties, or his Deputy, and until the Vellom, &c. be stamped.

The Printer and Publisher of any Phamplet exceeding one Sheet, ^{Printer of Phamplet.} and the Duty not being paid, and the Title of it registred, and one Copy not stamped within the Time limited by that Statute, forfeits 20*l.* with full Costs to the Crown and the Prosecutor; and the Author, Printer, and Publisher, to loose the Property of the Copy, though the Title is registred in *Stationers Hall*, and any Person may print it.

All Phamlets must have the Printer's or Publisher's Name printed thereon, or pay 20*l.* for every Offence, to be divided *ut supra*. ^{Phamlets must have the Printer's Name.}

Two or more Justices residing near the Place where any pecuniary Forfeiture, not exceeding 20*l.* upon any of the Statutes relating to the Duties on Stamps, shall be incurred, may hear and determine the same in a summary Way within a Year after the Offence committed, and may issue Warrants, to levy the Penalties on the Goods of the Offender, and sell the same unless redeemed within six Days. ^{Two Justices to determine in a summary way.}

The Justices may mitigate the Penalties, the reasonable Charges, and Costs of the Officers, and Informers being first allowed, and so as such Mitigation doth not reduce the Penalties to less than double the Duties over and above the Costs and Charges. ^{Justices may mitigate the Penalties.}

There lies an Appeal to the Quarter-Sessions from the Order of the two Justices, whose Determination shall be final, and they may issue Warrants to levy, &c. ^{Appeal to the Sessions.}

But no *Certiorari* lies to supersede Execution or any other Proceedings upon the aforesaid Statute. ^{No Certiorari.}

C H A P. XCVI. *Vide* LIII.

Stock of the Shire.

IN the Default of the Parishioners, Church-wardens and Constables (that shall not assess the Tax imposed upon the Parishioners by the Justices at their *Easter Sessions*, towards the Relief of the Prisoners in the *King's Bench* and *Marshalsea*, and of the Hospitals of that County, and of the Losses by Fire or Water and other Casualties, and Relief of the Poor within that County) any Justice of Peace dwelling in that Parish, or (if none dwell there) in the Parts next adjoining, may assess the same: And the same Justice, or any other Justice of Peace of that Limit (in Default of the Church-wardens and Constables) may levy the same by Distress and Sale of the Goods of the Party refusing or neglecting to pay his Part thereof, rendring to the Party the Overplus; and in Default of such Distress, any Justice of Peace of that Limit may commit such Person to Prison, there to remain without Bail, till he hath paid the same. ^{§. 1. One Justice. To what uses they must be employed. Levying.}

Also in Default of the Parishioners, Church-wardens and Constables (that shall not assess the Tax imposed upon the Parishioners by the Justices at their *Easter Sessions*, towards the Relief of maimed Soldiers and Mariners) any Justice of Peace dwelling in that Parish ^{§. 2. Soldiers.}

or (if none dwell there) in the Parts next adjoining, may assess the same: And the same Justice of Peace (in Default of the Churchwardens and Constables) may levy the same by Distress and Sale of the Goods of the Party refusing or neglecting to pay his Part thereof, rendring to the Party the Overplus. But in Default of such Distress, the Justices of Peace may not commit such Person to Prison, as they might in the former Case. 43 El. cap. 3. P. Captain 11. Now in these and other Rates and Taxations you shall observe these Rules following.

6 3. Taxes. 1. First, That the most reasonable rating of Land is by the Year-ly Value and Quality thereof, and not by the Quantity or Content. Co. 9. 12.

2. He that occupieth Lands lying in several Parishes, shall be charged in every Parish proportionably for his Land there.

3. The Fermor shall be rated for the Lands, and not the Lessor or Landlord. Co. 5. 65.

4. The Landlord shall not be rated or taxed for his Farm-Rents, in as much as the Farmer or Occupier of the Land is chargeable for the same Land. So where my Fermor is assessed by his Goods, I ought not to be assessed for my Rent of the same Farm. Br. Quinz. 2. 4.

7 H. 4. 33. & 11 H. 4. 35. Upon a Complaint to the Judges of Assize in the County of Lincoln; it was resolved and ordered, that the Lands in the Parish, and not the Rent, neither of that Land nor of the other Lands, could be taxed. Sir Anthony Irbie's Case, Assize Linc. 1633.

By Goods in most Cases, a Man may be rated, as well as by Lands; but not both by Goods and Lands, as it seemeth.

The like you may see in divers Acts of Subsidies, wherein there is usually a special Proviso, that no Person shall be taxed both for his Lands and Goods, nor double rated. See the Acts of Subsidies, 7. 18. & 21 Jac. & 27, 29, 31, 35, 39 & 43 Eliz. & 4 Car. and yet see 44 E. 3. Br. Customs 6. where a Tax of ten Pounds was made by the Parishioners for the Amending of their Church, and to be levied of every Plough-Land six Pence, and of every Cow one Penny, and of every ten Sheep half Penny, and 7. S. for his Lands, Cows and Sheep, was rated at 9 s. and was distrained for the same; and upon a Replevin, no Exception was taken to the Manner of Rate imposed. But Note, that the said Tax was made by his Consent; Et omnis consensus tollit errorem. Co. 5. 36, & 40.

So then he that hath both Lands and Goods shall be charged by the best, but he is not to be double charged, sc. by the one and the other; and yet in some Places they do use to charge one Person both by Lands and Goods: Which if it be warrantable by Law, yet it seemeth to be with this Difference, sc. That where a Man occupieth Land, and also hath in his Hands a great Estate or stock of Merchandize, or be also a Clothier, Malster, or the like, that such Person may be charged by his Lands, and also by such his Stocks; but for such Goods or Stock of Cattle, whereby a Man doth occupy, or manure his Lands, (as Horses, Sheep, Kine, &c. wherewith he stocketh his Land) a Man shall not be charged.

Also where a Man is rated by his Goods, it seemeth reasonable that such Goods be rated after the Value of Lands to be purchased, scil. one hundred Pounds in Stock or Goods, to be rated after five Pounds per Annum in Lands. And so after the like Proportion for a greater or lesser Estate in Goods, Stock, Merchandise or the like.

Note, Where a Man is charged by Goods, they must be *bona notabilia*, as it seemeth; and yet to the Subsidy, Men are rated not only by their Stock of Merchandize or Cattle, Corn, Householdstuff or other moveable Goods which are *notabilia*, but also to their Money and Debts owing to them (deducting such Debts as they owe to others, and such Debts as be desperate:) But there the Party over-rated, upon his Complaint to the Commissioners, and his Oath taken before them, that his Goods, Money, or Debts be not of such Value (which Oath the said Commissioners are authorized to take by the Statute) they may abate the said Assessments according as upon such Examination shall appear to them just. See the afore-cited Acts of Subsidies.

Also for Goods, a Man shall be charged only in that Town where the Goods be at the Time of the Assessment. *Br. Quinz.* 4 & 6. See the Statute 9 H. 4. c. 7.

Also if a Man be assessed for *his Goods in D.* when as he had no Goods there, and be distrained for such Assessment, he may have an Action of Trespass. *B. Quinz.* 3 & 4.

The Constables (or other Officers) and greater Part of the Parishioners (upon a general Warning given in the Church) assembled, ^{§. 4. Officers} may make such Taxations by Law. See *Coke* 5, 6, 7. *Fi.* 49.

The like may be done by the Church-warden and the greater Part of the Parishioners, for Church Charges.

And if the greater Part of the Parishioners will not meet upon such Warning given, it seems the Officers, and such of the Parishioners as will meet, may make such Taxations.

Note, That such Taxations being made for a Commonwealth, as for the Making or Amending of a Bridge, Highway, Causey, Sea-bank or the like, they shall bind all Persons (although they assent not). 44 E. 3 18, 19. *Br. Customs* 6. Co. 5. 63. *Fi.* 49.

And so of Taxations made to repair the Church, or for other common Town Charges where they are made by the greater Part of the Parishioners, as aforesaid. See Co. 5. 36, & 67. & 21 H. 7. fol. 20. b. & 8 E. 1. *Fitz. Ass.* 413.

Also when Assessments are made for the Reparations of Bridges, Highways, Sea-Banks, Causeys, and the like, the Sum assessed upon ^{§. 5. Sewers} particular Men (or Towns) ought to be competent and reasonable, having Regard to the Benefit which the Parties assessed or charged shall or may have and enjoy, by Reason of the said Assessment, and so reasonable as that the Party shall or may have more Benefit than Charge thereby; and then such Assessments cannot be reputed burdensome or a Charge to the Subject. See 13 H. 4. fol. 14. & Co. 5. 63.

If a Township be amerced, and the Neighbours do (by assent) assess a certain Sum upon every Inhabitant, and do agree that J. S. shall gather it; and that if it be not paid at such a Day, that J. S. shall distrain for the same; in such a Case a Distress taken by J. S. (for such Rates behind) is good. *Br. Cust.* 6. *Doct. & Stud.* 74. b.

And Issues estreated upon the Parish, may by Order of Sessions be equally rated upon the Inhabitants and levied accordingly. Ord. 16. May 8. Car. lib. Sess. Pac. Mid. Consimil. Ord. for the Inhabitants of Fulham, 9 Apr. 11 Car. Inhabitants of Eling. Ord. 2. Dec. 9 Car.

Stolen Goods. See Theft Chap. 155.

X x 2

C H A P.

C H A P. XCVII. *Vide* LIV.*Subsidy.*

IF any Person that ought to be set to the Subsidy, do by his Craft or Covin escape the Taxation, and it be proved before two Justices of Peace of that County, then shall he be charged at the double Value of so much as he ought to have been taxed at, and shall further be punished at the Discretions of the said Justices. See 7 & 21 *Jac.* and divers former Acts of Subsidies.

Surety of the Peace. See Chap. 116.

C H A P. XCVIII.

Swearing.

§. 1. **I**F any Person or Persons shall prophanely swear or curse in the Hearing of any Justice of Peace in the County, (Mayor, Bailiff, or Head Officer of any City or Town Corporate) where such Offence shall be committed; or shall be thereof convicted by the Oaths of two Witnesses, or by Confession of the Party before any such Justice of Peace or Head Officer, &c. Every such Offender shall, for every Time so offending, forfeit and pay to the Use of the Poor of that Parish where the Offence shall be committed, the Sum of 12*d.* 21 *Jac. c. 20*, & 3 *Car. 4.* ^{21 Jac. 20} ^{3 Car. 4.} ^{17 Car. 1. c. 4.}

Penalty.

Every Justice of Peace, and every such Head Officer, may minister the said Oath to every Witness. 21 *Jac. c. 20.*

§. 2. *How to be levied.*

Every Justice of Peace, and every such Head Officer may make their Warrant to the Constables, Church-wardens, and Overseers of the Poor of that Parish where the said Offence shall be committed; and the said Constable, Church-wardens, and Overseers of the Poor, by Virtue of that Warrant, may levy the same Sum and Sums of Money by Distress and Sale of the Offender's Goods, rendring to the Party the Overplus. *Ibid.*

In Defect of such Distress, the Offender (if he or she be above the Age of twelve Years) shall by Warrant from such Justices of Peace or Head Officer be set in the Stocks by three whole Hours. But if the Offender be under the Age of twelve Years) and shall not forthwith pay the said Sum of 12*d.* that he or she by Warrant of such Justice of Peace or Head Officer shall be whipped by the Constable, or by the Parent or Master in the Presence of the Constable. *Ibid.*

But every Offence against this Law shall be complained of and proved as aforesaid within twenty Days after the Offence committed. *Ibid.*

6 & 7 W. 3. c. 11. Any Person that shall prophanely Swear or Curse after the 24th of June 1695. in the Hearing of any Justice of Peace of the County, or other Head Officer or Justice of Peace of the City; or shall thereof be convicted by Oath of one Witness, or Conviction on of the Party before any Justice of the Peace, Mayor, &c. The Offender shall forfeit to the Use of the Poor, if he be Servant, Labourer, Common Soldier, or Common Seamen, one Shilling, and every other Person two Shillings: And for every second Offence double; and for every third Offence treble.

Ibid. The Penalties shall be levied by Distress, by Warrant of one Justice. If no Distress, the Party to be set in the Stocks one Hour for one Offence; for more than one, two Hours, if above sixteen Years of Age; if under, to be whipt.

Ibid. Justice of the Peace, &c. who wilfully omits the Execution of this Act forfeits five Pounds.

Ibid. None to be prosecuted upon this Act, unless within ten Days after the Offence.

This Act to be read in Churches by the Parson the next Sunday after every Quarter-Day Yearly, immediately after the Morning Prayer, upon Pain of twenty Shillings for every Omission.

Justices of Peace, Mayors, &c. shall Register in a Book kept for that Purpose, all Convictions made before them upon this Act, and the Time, and certify the same to the Quarter-Sessions, to be there kept upon Record by the respective Clerks of the Peace, to be seen without Fee.

Vide Tit. Oaths.

Tanner. Vide Leather.

Taxing. See Poor, and Stock of the Shire.

C H A P. XCIX.

Tobacco.

12 Car. 2. cap. 33. NO Person may set, plant, improve to grow, make or cure any Tobacco in Seed, Plant, or otherwise, upon any Ground in England, Wales, Isles of Guernsey, Jersey, Berwick or Ireland, upon Pain of Forfeiture of 40s. for every Pole or Rod of Ground planted, set or sown; and so proportionably for any greater Quantity: One Moiety to the King, and the other Moiety to him who will sue for the same in any Court of Record.

And by the Statute of 15 Car. 2. cap. 7. the Penalty of 10 l. for every Pole or Rod of Ground is given, above the 40s. by the said Act of 12 Car. 2. cap. 34. And one third Part thereof given to the King, another third Part to the Poor of the Parish, and the other third Part to the Informer.

And all Sheriffs, Justices of the Peace, Mayors, Bailiffs, Constables, and every of them, upon Information or Complaint made to them or any of them, of any such Tobacco sown or planted within their Precincts, shall within ten Days after such Complaint cause the same to be destroyed. And any Person resisting or opposing the Execution

Execution of the said Act to forfeit five Pounds for every Offence, to be recovered as aforesaid, and by Distress and Sale of the Offender's Goods; and for Want of Distress the Offender to be imprisoned two Months without Bail. And over and above the Penalties appointed by this Act for such as resist; by the Statute of 15 Car. 2. c. 7. the Party resisting shall be committed to the Gaol without Bail, till he enter into a Recognizance to the King, with two Sureties of 10 l. Penalty not to do so again; and by the Statute of 22 & 23 Car. 2. shall forfeit 5 l. to be levied by Distress and Sale; and if no Distress, by Imprisonment for three Months without Bail, upon Conviction before two Justices of Peace.

All Justices of Peace, a Month before every General Quarter-Sessions, shall issue Warrants to the High Constables, &c. requiring them to make Search what Tobacco is sowed, set, planted, growing, curing, cured or made, and to make a Presentment in Writing upon Oath, next Sessions, of the Names of the Persons planting, &c. the Quantity of Land, the immediate Tenants or present Occupiers, who shall be deemed Planters thereof.

§. 3. Inquiry. Which Presentment, filed in Sessions, shall be a Conviction, unless the Persons presented (having Notice by the Delivery of a Copy of the Presentment to him, or leaving it at his Dwelling-house or usual Place of Abode, in the Presence of one or more credible Witnesses, ten Days before the next Sessions) shall at next Quarter-Sessions, after such Notice, traverse the same Presentment, and find Sureties for prosecuting his Traverse the next Sessions after such Traverse. 22 & 23 Car. 2.

All Constables, Tithingmen, Bailiffs, and other publick Officers in their Jurisdictions, within fourteen Days after Warrant from two or more Justices of Peace, calling such Assistance as they find necessary, may destroy the same Tobacco. 22 & 23 Car. 2.

§. 4. Officer's Neglect. If such Tobacco shall be suffered to stand unconsumed after the Receipt of such Warrant, then such Officers shall forfeit 5 s. for every Pole, Perch or Rod, and so proportionably for a greater or lesser Quantity. One Moiety to the King, the other Moiety to the Informer. 22 & 23 Car. 2.

§. 5. Assistance. If any Person refuse or neglect to assist such Officer, for every such Offence he shall forfeit 5 s. upon Conviction thereof before two Justices of Peace, to be levied by Warrant from such Justices by Distress and Sale; and if no Distress, the Party to be committed to the Gaol without Bail for one Week. 22 & 23 Car. 2.

This Statute to continue for nine Years, and thence to the End of the next Session of Parliament.

Continued for seven Years, and by 4 & 5 Will. 3. continued from 1 Jac. 2. 1692, farther continued for seven Years, and to the End of the next Session, &c. ^{cap. 17.}
^{4 & 5}
^{Will. 3.}

Cutting Leaves and Plants, &c. resembling Tobacco. Every Person who shall cut or procure to be cut, any Manner of Leaves, Herbs, Plants or Materials (not being Tobacco Leaves) into the Form or Imitation of any the usual Sizes or Cuts which Tobacco is usually cut for Sale, or shall colour, or procure to be coloured or cured any such Leaves, &c. to make them resemble Tobacco, or shall sell or procure to be sold, or agree or offer to sell knowingly, any such Leaves, &c. mixed or not mixed with Tobacco, shall forfeit for every Pound so offered to Sale, and for every Pound of such Mixture 5 s. and after that Rate for a greater or lesser Quantity; one ^{cap. 46.}
^{1 Geo.} Moiety

Moiety to the Crown bearing the Charge of the Prosecution, and not otherwise; the other Moiety to the Informer, to be recovered by Action of Debt in the Courts at *Westminster*, with full Costs, &c.

No House shall be opened to search for such Leaves, or for Engines, Utensils and Tools, &c. without a special Warrant from two Justices of the Peace, and if seized above six Miles from any Port, shall be secured by the Order of two Justices at the King's Charge, till the Cause of Seizure be determined at the next Sessions, or the Sessions after that at farthest; and after Condemnation shall be burnt.

Servants and Labourers employed in cutting such Leaves, or knowingly selling the same, and being convicted thereof by the Oath of one Witness, before two Justices, shall be by them committed to Gaol, or to the House of Correction, there to be kept at hard Labour for any Time under six Months, without Bail.

5 Geo.
cap. 7.

Enacted, That the Stat. 12 *Anna*, cap. 8. for encouraging the Tobacco Trade, and all Things therein contained, shall be continued and in Force during such Time as the respective Duties on Tobacco shall continue,

Timber. Vide Wood.

Toll. See Weights and Measures.

CHAP. C. *Vide LVI.*

Transportation, Importation, Exportation, and Transportation of Felons.

1 & 2 Ph.
& Ma. 5.
P. Just. 27.

IT should seem by the Words of the Statute, that any one Justice of Peace may inquire of, hear and determine (as also may examine the Mariners and every other Person) of all and singular the Offenders against the Act 1 & 2 *Phil. & Mar.* provided for the restraining of carrying Corn, Beer, Butter, Cheese, Herrings and Wood beyond the Sea. But *Quere.* By which Statute, being at or under these Prices, it might be transported.

	s.	d.
'Wheat	6	8
'Rye	4	0
'Barley	3	0

the Quarter.

Yet note, That every Man may transport Corn, it being at these Prices following (except it be prohibited by Proclamation) *sc.*

Wheat	The Quarter	32 s.
Rye		20 s.
Barley and Malt		16 s.
Pease and Beans		16 s.

21 Jac. 4.
3 Car. 4.

Also that every Man may transport any Beer when the Price of a Quarter of Malt exceeds not the Sum of sixteen Shillings. 3 *Jac.* cap. 11. 21 *Jac.* 28.

And

§. 2.
Corn.

And it is holden to be great Policy, to provide that Corn be always of a reasonable and competent Value, it being an assured Means to increase and advance Husbandry and Tillage, the antientest of all Trades and Professions, and commanded by God to *Adam*, *Gen.* 3. 23. One of the greatest Commodities of this Realm, and much respected and favoured, as well by the Common Law, as also by the common Assent of the King, the Lords and Commons in many Parliaments. *Co.* 4. 39. See the Statutes, 17 *R.* 2. c. 7. 4 *H.* 6. c. 5. and 1 & 2 *Ph.* & *Mar.* c. 5. *And besides, it is the Means whereby the Fermors are better enabled to pay their Landlords their Rents, to maintain their own Families, and to set on work and to relieve their poor Neighbours.*

§. 3.
Cattle.

For and touching the Transportation of Corn, Cattle, Victuals and other Things. See 22 *Car.* 2. and 15 *Car.* 2. 7. 12 *Car.* 2. *Hic Tit.* Corn.

There shall be paid for every Head of great Cattle brought elsewhere than from Scotland, after the first Day of July, and before the twentieth Day of December, and from Scotland, after the twenty-fourth Day of August and the twentieth Day of December, 20 s. Ten Shillings to him that seiseth them, and ten Shillings for every Sheep imported after the first Day of August and before the twentieth Day of December, to be recovered by Action. 15 *Car.* 2. c. 7.

§. 4.
Cattle and
Victuals.

18 *Car.* 2. c. 2. *The Bringing in of Cattle is declared a Nuisance, and if any great Cattle, Sheep, Swine, or any Beef, Pork or Bacon, shall be imported or brought into England, any Constable, Headborough, Tithing-man, Church-wardens or Overseers, within their Limits, may seise the same, and may keep them for forty-eight Hours in some publick Place; in which Time, if the Owner shall make it appear by the Oath of two Witnesses, unto some Justice of Peace, that the same came not from beyond the Seas, the same by Warrant from a Justice shall be delivered to the Party: But if he shall not make it so appear, the same shall be forfeited; one Moiety to the Seisor, the other Moiety to the Poor where the same are seised, the Island of Man excepted, so as they be of their own Breed, and exceed not 600 in one Year, and be landed at Chester.*

Not only the Constables, Tithingmen, Headboroughs, Church-wardens or Overseers of the Poor, but every Inhabitant, or any other Person whatsoever shall and may seise any great Cattle, Sheep or Swine, or any Beef, Pork or Bacon imported into *England* or *Wales* contrary to the afore said Statute of 18 *Car.* 2. cap. 2. wheresoever the same shall be found, and shall within six Days after Conviction and Forfeiture thereof cause the said Cattle, Sheep and Swine to be killed, and the Hides and Tallow shall be to the Seisor, and the Remainder of the said Cattle, Sheep and Swine shall be forthwith by the Church-wardens and Overseers distributed among the Poor of the Parish, upon Notice thereof to be given by such Seisor. 29 *Car.* 2. c. 7. & 32 *Car.* 2. c. 2.

Forfeiture.

If such Seisor, Church-warden or Overseer shall fail in the Execution of his said Duty, they shall severally forfeit forty Shillings for every one of the great Cattle, and ten Shillings for every Sheep or Swine which should have been so killed or distributed; one Moiety thereof to the Poor of the Parish, and the other to the Informer, to be levied by Distress and Sale of the Offender's Goods, by Warrant of any Justice of Peace of the County or Place where the Offence is so committed, upon Confession of the Party, View of the Justice, or Oath of one or more credible Witnesses (other than the Informer) the Overplus to the Owners, necessary Charges of distraining deducted: 32 *Car.* 2. c. 2.

ed: And for Want of Distress, the Offender to be committed to Gaol for three Months without Bail or Mainprize.

20 Car. 2. c. 7. If no Seifure shall be made by the Officers or Inhabitants within the Liberty, Parish or Place where such Cattle or Goods shall be first imported, such Liberty, Parish and Place, and the Inhabitants thereof, shall forfeit for every Default 100 *l.* for the Use of the House of Correction, within the County or Liberty, where such Default shall be.

32 Car. 2. c. 2. If any great Cattle, Sheep or Swine shall be once or oftner seised, and afterwards by Permission, Connivance, Negligence, or otherwise, removed and found alive in any other Parish or Place, they shall be liable to like Seifure, and the Seisor and Poor of the Parish or Place, to the like Benefit, and the Cattle, Sheep and Swine be forfeited; and the Proof incumbent upon the Owner, as if such Cattle had never been seised before.

Ibid. If any *English* or other Cattle, driven or intermixed with *Irish* Cattle, shall be seised together with them, such Cattle shall be deemed *Irish*, and shall be subject to like Forfeiture, and be ordered and disposed in all respects, as if they were *Irish*. *Cattle intermixt.*

30 Car. 2. c. 7. Every Vessel in which any Cattle, Swine, Sheep, Beef, Pork or Bacon shall be imported from beyond Sea, and out of which any of them shall be put on shore, shall be forfeited; and any Person within a Year after such Importation, may seise and sell her: One Half of the Price to be to the Use of the Poor of the Parish where seised. The other Half to him that shall seise: And any Justice of Peace of the County, or chief Officer of the Port-Town, in or near the Place where such Importation shall be, or where any of the said Cattle, &c. shall be driven or brought, by Warrant under Hand and Seal, may cause to be apprehended the Masters and Mariners of the Vessel, in which such Importation shall be made, and others employed in landing, driving or taking Care of the same, and commit them to Gaol for three Months without Bail.

Ibid. All Forfeitures by the Acts of 18 Car. 2. cap. 2. and 20 Car. 2. c. 7. *Account;* are to be accounted for to such Persons, and in such Manner, as the Overseers of the Poor are appointed to account by the Statute of 43 Eliz. cap. 2.

32 Car. 2. c. 2. No Mutton or Lamb shall be imported into *England* from *Ireland*, *Mutton, Lamb, Butter and Cheese.* or any foreign Ports; nor any Butter or Cheese out of *Ireland*; and all such Mutton, Lamb, Butter or Cheese imported or exposed to Sale here, shall be subject to the like Seifures, and the Importers and Sellers to the like Penalties as are appointed against any Importer or Seller, or Importation of Beef, Pork or Bacon.

Suit may be commenced in the Sessions for any Forfeiture accrued upon Statute of 15 Car. 2. cap. 7. whereby is prohibited the Importing any Commodities of the Growth or make of Europe, into any Place in his Majesty's Possession in Asia, Africa and America, (except Tangier) but what shall be shipped in England or Wales, and that in English Shipping, &c. *§. 5. Plantations.*

No Person shall sell or cause to be sold, or offer to Sale, or export any foreign Bone-lace, Cut-work, Imbroidery, Fringe, Band-strings, *§. 6. Lace and Buttons, small* Buttons or Needle-work, made of Thread, Silk, or any or either of them, in Parts beyond the Seas, or import, bring in, send or convey, or cause, &c. into England, &c. any such foreign Bone-lace, &c. upon

Pain, That the Person that shall sell or offer to Sale foreign Bone-lace, &c. shall forfeit for every Offence 50 l. and the whole Bone-lace, &c. And upon Pain that he that shall import, &c. such foreign Bone-lace, &c. shall forfeit the whole Bone-lace, &c. and 100 l. for every such Offence. A Moiety thereof to the King, and the other Moiety to the Prosecutor in any the King's Courts of Record, &c. 14 Car. 2. c. 13.

§ 7.
Search.

Upon Complaint and Information to any Justice of Peace at Times reasonable, he shall issue out his Warrant to the Constables, to enter and search for such Manufactures in Shops, being open, or Warehouses and Dwelling-houses of the Persons suspected to have the same, and seise the same. 14 Car. 2. c. 13.

§ 8.
Horses.

No Person shall give, exchange, sell, convey and deliver into Scotland, to the Use of any Scotchman, nor give, &c. into any Place beyond the Sea, out of this Realm, or the Dominions thereof, any Horse, Gelding or Mare, without Licence from the King, under the Great Seal or Privy Signet. No Person shall give, &c. to any Scotchman in England, to the Intent to be conveyed into Scotland, any Horse, Gelding or Mare, or do convey or carry any Horse, Gelding or Mare into any foreign Parts, without such Licence, upon Pain to forfeit the same to the King, and also 40 l. for every one. A Moiety to the King, the other Moiety to the Prosecutor in the King's Court, and Imprisonment for a Year. 1 E. 6. 5. 5 El. 19.

§ 9.
Who may inquire.

Justices of Peace in their Sessions may inquire of the Offences, and every Subject may arrest the Persons offending against that Act. That Act shall not prejudice any that carry Horses beyond the Sea, in the King's Service, nor to the Warden of the Cinque Ports, that may give or send six Horses or Geldings beyond Sea in every Year, nor to the Master of the Horse, as to the Duties of his Place. 1 E. 6. 5. 5 El. 19.

§ 10.
Beer.

Every Person, when the Price of Malt exceeds not the Sum of 16 s. 3 Jac. c. 1. may transport of his Own, or buy and transport to any Part beyond the Seas, in Amity and League with England, in Ships or Vessels, any Beer with the Cask, and the King shall receive 8 s. 6 d. for Impost; and 1 s. 6 d. for Custom for every Tun of every Subject, and 10 s. Impost, 22 d. ob. of every Stranger in full for all Duties.

'Tis Felony without Benefit of Clergy to rescue an Offender ordered to be transported, and likewise aiding or assisting them to escape. 6 Geo. cap. 23.

A Felon ordered to be transported, and returning before the Term expired, is guilty of Felony without Benefit of Clergy; and this may be tried in the County where he was taken, or from whence he was ordered to be transported; and a Certificate from the Clerk of the Assize, or of the Peace, or their Successors, containing the Effect and Tenor of the Indictment and Conviction, and of the Order and Contract for Transportation being produced in Court, shall be sufficient Proof, that such Person hath been before convicted and ordered to be transported.

Touching exporting Sheep. Vide Tit. Sheep.

Touching exporting Wool. Vide Tit. Wool.

For importing Fish. Vide Tit. Fish.

Trees. See Trespass.

C H A P. CI. *Vide* LVII.*Trespass.*43 El. 7.
P. 1.

ALL and every lewd and mean Persons which shall unlawfully cut or take away any Corn growing, or rob any Orchards or Gardens, or break or cut any Hedge, Pale, Rail or Fence, or dig, pull up or take away any Fruit-trees, or shall cut or spoil any Woods, Under-woods, Poles or Trees standing, (not being Felony) and their Procurers or Receivers, knowing the same, being thereof convicted by Confession of the Party, or by the Testimony of one sufficient Witness, upon Oath before any one Justice of Peace, (where the Offence shall be committed, or the Offender apprehended) shall for the first Fault give the Party wronged such Recompence (and within such Time) as by any one Justice of Peace (of the County where such Offence shall be done) shall be appointed. And if such Offender shall be thought (in the Discretion of the said Justice) not able, or do not make Satisfaction accordingly; then the said Justice shall commit the said Offender to some Constable or other inferior Officer (where the Offence shall be committed or the Offender apprehended) to be whipped.

§. 1.
Orchards.
Corn and
Fences.

Also for the second Fault, and every other Offence whereof such Offender shall be after convicted in Form aforesaid, such Offender shall be whipped as aforesaid, without any Satisfaction to be taken. *Ibid.*

P. 2.

If any Constable or inferior Officer do refuse, or do not, at the Command of the Justice (by himself, or some other by him to be appointed) execute upon the Offender the Punishment aforesaid, the said Justice may commit such Constable, &c. to the common Gaol, there to remain without Bail until the said Offender be by the said Constable, or by some other by his Procurement whipped, as aforesaid.

§. 2.
Officer's
Neglect.

P. 3.

But no Justice of Peace shall execute this Statute for any of the Offences aforesaid done unto himself, unless he is associated and assisted with one or more other Justices of the Peace whom the Offence doth not concern.

One Justice of Peace (not being the Party grieved) may send such Offenders for their second Fault, &c. to the House of Correction, as idle and disorderly Persons, there to be detained, &c. at the Discretion of the said Justice; and this by Force of the Statute 7 Jac. 4. Especially, if they be common Offenders in this Kind; or may bind them to their Good Behaviour, and so over to the next Quarter-Sessions, and by Order from thence, to be sent to the House of Correction, there to be continued some convenient Time.

But for the gleaning and leaving of the Harvest, &c. God commandeth, that it be left for the Poor, the Fatherless, the Widow, and the Stranger. Levit. 19. 9, & 23. Deut. 22. 24. And it were worthy the Consideration of the Justices to take some Course that such only might have the Benefit of Gleaning, and not Fermors and Tradesmen, that in many Places in Harvest-Time set their Servants to that Employment, which is no better than to rob the Poor of what properly belongs to them.

§ El. 21.

If any shall by Night or Day unlawfully break, cut down, cut out or destroy any Head or Dam of any Pond, Pool, Mote, Stagne, Slew

§. 3.

or several Pit; wherein Fish are or shall be put, or shall fish therein without Authority, and be convicted thereof at the Suit of the King or Party grieved, he shall be imprisoned three Months, and pay the Party treble Damages; and after the three Months be bound to the Good Behaviour for seven Years with sufficient Sureties, or else continue in Prison for seven Years without Bail. For the Recovery herein, see Tit. Hunting.

- §. 4. No Person shall slay, take or cause to be taken by Means of any Craft or Engine any Herons, unless by Hawking or with Long-Bow, upon Pain to forfeit for every Heron 6s. 8d. For the Conviction, see Tit. Hunting. See postea Tit. Wood.

Trees.

Maliciously	Barking, Breaking down, Cutting up, Defacing, Destroying, Plucking up, Spoiling, or Throwing down,	Any	{ Fruit-Tree, Timber-Tree, Or other Tree.

1 Geo.
cap. 48.

The Party grieved shall receive Satisfaction from the Inhabitants ^{Westm. 2.} of the Parish where such Trees shall be barked, &c. against whom ^{cap. 46.} an Action may be brought to recover the Damages, according to the Statute 13 Ed. 1.

Any two Justices where such Offence shall be committed, or the Sessions upon Complaint of the Inhabitants of the Parish, or the Owner of the Trees, or any other, may cause the Offenders to be apprehended, and hear and determine the Offence, and on Conviction may commit them to the House of † Correction, there to be kept to hard Labour for three Months without Bail; and if there be no House of Correction, then to be committed to the common Goal for four Months, and to be publicly whipped by the common Hangman once every Month during the four Months, on a Market-Day, in some Town, between the Hours of eleven and two.

† And to be publickly whipped once every Month during those 3 Months in some Market-Town and for two Years, Day, &c.

Before he is discharged shall find Sureties for his good Behaviour

Maliciously setting on Fire, burning, or causing to be burnt, any Wood, Underwood, or Coppice, or any Part thereof, is Felony.

Any Person	Barking, Breaking Burning, Carrying away, Cutting, Defacing, Destroying, Plucking up, Spoiling, Taking up, Throwing down,	Any	{ Coppices, Pales, Quicksets, Springs of Wood, Thorns, Tops of Trees, Underwoods, Wood Springs, or Woods,

6 Geo.
c. 16.

without the Consent of the Owner, or of him who is intrusted with the Care thereof.

Breaking open,
Destroying,
Levelling, or
Throwing down

Any

Banks,
Dikes,
Ditches,
Fences,
Gates,
Hedges,
Posts,
Rails,
Stiles, or
Walls;

Or any
other En-
closures of

Chases,
Coppices,
Fruit-Trees,
Parks,
Plantations,
Quicksets,
Thorns, or
Trees,

wrongfully and malici-
ously without the Consent
of the Proprietor, Wood-
keeper, or Person chiefly
entrusted with the Care of
Woods, Underwoods, Parks,
Chases, Coppices, or Plan-
tations.

He who is damnified shall have Recompence of the Inhabitants of the Village adjoining, as by the Act 13 Ed. 1. upon which Act* Writshave been founded to distrain the adjoining Vills, to satisfy the Damages, where the Offenders cannot be known; and by the Statute 6 Georgii^{II} aforesaid, if he be known, and shall not be convicted by the Parish within six Months after the Fact committed.

Nota, this last Statute extends to preserve all *Enclosures* about Chases, Coppices, Trees, which the first Act 1 Georgii did not, but the Prosecution and the Conviction and Punishment must be as by the Statute of *Westminster* 2. is enjoined.

Unlawfully taking or cutting Corn growing, robbing Orchards, and taking away any Fruit-Trees, &c. shall make such Recompence as Justices shall direct, and a Sum not exceeding 10s. to the Poor; and in Default thereof to be sent to the House of Correction, not exceeding a Month, and be whipped.

Prosecution to be within six Weeks after the Offence, and the Conviction by Confession, or one Witness.

The Defendant was convicted by two Justices upon the Statute 1 Geo. cap. 48 for destroying Fruit-Trees, and it was moved to quash this Conviction, because it did not specify the Punishment inflicted by that Statute, which is to be sent to the House of Correction for three Months, &c. and the better Opinion was, that this being a Special Judgment of the two Justices, they should have specified the Punishment inflicted by the Statute, because it might be different from the Punishment appointed by them: However there being no Forfeiture in this Case, it was held, that *Ideo consideratum est quod convictus est* was sufficient without setting forth the Punishment. *Trin. 9 Geo. B. R.*

Trial. See Chap. 187.

C H A P.

C H A P. CII. *Vide* LVIII.*Tithes.*

§. 1. **T**WO Justices of the Peace (the one being of the *Quorum*) upon Complaint by any competent Judge of Tithes, for any Misdemeanor of the Defendant in a Suit of Tithes (or for other Duties of the Church) may cause him to be attached and committed to Ward, there to remain without Bail until he find sufficient Sureties (unto the said Justices) by Recognizance to the King's Use, to obey the Process and Sentence of that Judge.

§. 2. Also upon Complaint or Certificate in Writing by any Ecclesiastical Judge, that hath given definitive Sentence, in the Case of Tithes, against one which wilfully refuseth to pay the Tithes or Sums of Money so adjudged, two such Justices of Peace may cause the Party to be attached and committed to the next Gaol, there to remain without Bail, till he find such Sureties (as aforesaid) to perform that Sentence.

§. 3. *Ou si le partie disobey tiel sentence, il poit estre excommunge pur tiel Contumacy; & donque si cesty issint excom' ne voile per 40 jours estre reconcile al Eglise, sur certificat fait al Roy per la Ordinary en le Chancery, le partie serra mise en prison tanque il voile satisfaire l'Eglise, & ceo per un brief de Excom' Capiendo. Fi. 41.* ^{32H. 7. 8. P. Just. 104.}

If a Quaker refuse to pay or compound for Tithes, or Church Rates, the two next Justices may upon Complaint made, summon him to appear before them (other than such Justices who are Patrons of the Church, or interested in the Tithes) and they upon Examination of the Matter on Oath, may ascertain what is due to the Person complaining; and if under 10 *l.* may by an Order under their Hands and Seals direct the Payment thereof, and then if he refuse to pay it, one of the said Justices may by Warrant, &c. cause the same to be levied by Distress and Sale, &c. ^{7 & 8 W. cap. 34. made perpetual per 1 Geo. cap. 7.}

An Appeal lies to the Quarter-Sessions, and if the Quaker appeals, no Warrant shall be granted to distrain till the Appeal is determined.

If the Appeal is determined in Favour of the Appellee, the Sessions may give * Costs, to be levied by Distress, &c.

* Not exceeding 10 *s.* No *Certiorari* is to be allowed, unless the Title of the Tithes is in Question.

Small Tithes. All Persons shall set out and pay all and singular their small Tithes, Compositions, &c. to the Rectors, Vicars, or to whom they shall be due, according to the Rights used in the said Parishes: And if any Person fail, &c. in the Payment, &c. of such small Tithes, &c. for twenty Days after Demand thereof, then the Person to whom the same are due may make his Complaint in Writing to two or more Justices of Peace in that County, City, &c. where the same grows due, neither of which Justices is to be Patron of the Church where the said Tithes, &c. arise, nor any Ways interested in the said Tithes, &c. ^{7 & 8 W. 3. c. 6.}

Justices to determine Complaints And if Complaint be hereafter brought to two or more Justices of the Peace, as aforesaid, the said Justices are hereby authorized to summon in Writing under their Hands and Seals, by reasonable Warning, the

the Person or Persons against whom such Complaints shall be made, and after Appearance or Default, the Summons being proved upon Oath, the said Justices or any two of them, shall proceed to examine and determine the said Complaint, and upon Evidence produced before them, shall in Writing under their Hands and Seals, adjudge the Case, and give such reasonable Allowance for such Tithes, &c. so subtracted, and also such Costs, not exceeding 10 s. as they shall reasonably think fit.

7 & 8 W. 3. c. 6. If any Person shall neglect or refuse, the Space of ten Days after Notice, to pay the Sum so adjudged, the Constables and Church-wardens of the said Parish, or one of them shall by Warrant, under the Hands and Seals of the said Justices, distraining the Goods of the Party so refusing, and after detaining them three Days, in Case the Sum adjudged be not paid with reasonable Charges for making the Distress, he shall make publick Sale of the same, pay the Sum adjudged to the Party complaining, retain reasonable Charges for distraining, as the said Justices shall think fit, and return the Overplus. *Charge of Distress.*

Ibid. The Justices in their Examination of the Matters offered to them by this Act, may administer an Oath or Oaths. *Oath.*

Ibid. No Complaint to Justices of Peace for Tithes, &c. hereafter due, shall be heard and determined by them, unless made within two Years after the said Tithes become due.

Ibid. Parties aggrieved by any Judgment of the said two Justices, may appeal to the next Quarter-Sessions, and the Justices there present, or the major Part of them, shall finally hear and determine the Matter; and if they find Cause to confirm the Judgment given by the said two Justices, they shall decree the same by Order of Sessions, and give Costs against the Appellant, to be levied by Distress, &c. And no Proceedings to be removed by *Certiorari*, unless the Title of such Tithes, &c. shall be in Question. *Appeal.*

Ibid. Every Person obtaining Judgment, or against whom Judgment shall be obtained before Justices of Peace out of Sessions, for small Tithes, &c. shall procure the same to be enrolled at the next Quarter-Sessions; and the Clerk of the Peace upon Tender is to inrol the same, for which he shall receive no more than 1 s. *Judgment enrolled.*

Ibid. If the Person against whom such Judgment shall be had, shall after such Judgment, and before the Levying the Money adjudged, remove out of the County, City, &c. the Justices who made the Judgment, or one of them, shall certify the same under Hand and Seal to any Justice of Peace of such other County, &c. where the said Person shall inhabit, who is hereby required by Warrant under his Hand and Seal, to the Constables or Church-wardens of the Place to levy the Sum adjudged, in such Manner as the other Justices might have done, in Case the Party had not removed. *Removal of Party.*

Ibid. No Vicar or other Person shall recover small Tithes, &c. due before the Making of this Act, unless Complaint be made to the Justices of Peace, before the 1st of October, 1696.

Ibid. The Justices who shall hear and determine the Matters aforesaid, shall have Power to give Costs, not exceeding 10 s. to the Party prosecuted, if they shall find the Complaint false and vexatious; to be levied as aforesaid.

3 & 4 Annæ. This Act to continue for three Years, and from thence to the End of the next Sessions of Parliament. But 'tis made perpetual by the Statute 3 & 4 Anna.

C H A P. CIII. *Vide* LIX.*Tile.*

- §. 1. **B**Y the Words of the Statute, any one Justice may enquire, hear ^{17 El. 4. 4.} and determine (by Examination or otherwise by their Discretion) ^{P. 3. 4.} all and singular the Offences committed in Tile-making, *sc.* If they ^{Lam. 197.} be not made good, and of Earth well prepared, and also of due ^{Cromp.} Af- ^{130.} size in Length, Breadth and Thickness; and may assess the Fines limited by the same Statute; and may call before him such as have best Knowledge in Tile-making, and appoint them Searchers of the said Defaults; but Mr. Lamb. 197. maketh a Doubt thereof.

But the Justices so resolved, and accordingly made an Order for licensing Persons to be Searchers of all Manner of Tile made within the County of Middlesex for four Years. Ord. 5. Oct. 7. Fac. lib. Sess. pa. Mid.

Vagabonds. See Rogues.

Waggoners. See Carriages.

C H A P. CIV. *Vide* LX.*Watch.*

- §. 1. **I**N great Towns walled the Gates shall be shut up from the Sun-setting until the Sun-rising; and no Man shall lodge in the Suburbs or any Place out of the Town, from nine of the Clock till Day, except his Host will answer for him. 5 H. 4. c. 3. 5. E. 3. 14.
- Every Justice of Peace may cause Night-watch to be duly kept for ^{13 Ed. 1.} the arresting of Persons suspect or Night-walkers (be they Strangers ^{P. 1.} or others) that be of evil Fame or Behaviour: And this they may do by Force of the Commission, the first *Assig.* Lamb. 190.
- §. 2. This Watch is to be kept yearly from the Feast of the *Ascension* ^{Ibid.} until *Michaelmas*, in every Town, and shall continue all the Night, *sc.* from the Sun-setting to the Sun-rising.
- §. 3. All such Strangers or Persons suspected as shall in the Night-time ^{Winch.} pass by the Watchmen (appointed thereto by the Town, Constable or ^{13 E. 1. 4.} other Officer) may be examined by the said Watchmen, whence they ^{5 E. 3. 14.} come and what they be, and of their Business, &c. And if they find Cause of Suspicion, they shall stay them; and if such Persons will not obey the Arrest of the Watchmen, the said Watchmen shall levy Hue and Cry, that the Offenders may be taken, or else they may justify to beat them (for that they resist the Peace and Justice of the Realm) and may also set them in the Stocks (for the same) until the Morning; and then, if no Suspicion be found, the said Persons shall be let

let go: But if they find Cause of Suspicion, they shall forthwith deliver the said Persons to the Sheriff, who shall keep them in Prison until they be duly delivered; or else the Watchmen may deliver such Persons to the Constable, and so to convey them to the Justice of Peace, by him to be examined, and to be bound over or committed, until the Offenders be acquitted in due Manner. See more of *Watch* in the Title *Felony*.

These Watchmen are also to apprehend all Rogues and Vagabonds, Night-walkers, Eves-droppers, Scouts, and such like, and such as go armed, &c. §. 4.

Cro. 3. Note, That in an Action of False Imprisonment brought by one
p. 204. *Sm.* against *Brown* (a Constable of *Chelmsford* in *Essex*) these Things were holden for Law concerning Watches, about 32 *Eliz.*

1. First, That no Man is compellable to watch except he be an Inhabitant within the same Town.

2. That such as are Inhabitants within the Town are not compellable to watch at the Will of the Constable, but only when their Turn cometh; and therefore *Gawdy* (Justice) said, That the Statute of *Winchester* is, That from henceforth Watches shall be kept as hath been used in Times past, &c. And so the Manner of Watching is not referred to the Will of the Constable, but only to the Use heretofore, which is commonly by Turn, or by the House.

3. That if a Man who is compellable to watch shall contemptuously refuse, upon Commandment of the Constable, the Constable *Ex Officio* may set him in the Stocks for such his Contempt. *Tamen quare de hoc.* Or else the Constable may present such his Default at the Assizes or Sessions of the Peace, &c. Or may complain thereof to any Justice of Peace who may bind the Offender to the Good Behaviour, and so over to the next Quarter-Sessions, &c.

Note also, That both Watching and Warding must be by Men that be able of Body and sufficiently weaponed.

And Note, That Watching is properly intended of the Night, and Warding for the Day-time; and for the Warding in the Day-time, for the Apprehending of Rogues and the like idle evil Members, is of great Use; it therefore is and must be left to the Discretion of the Constable and Directions of the Justice of Peace to appoint or alter according to the Occasion. Resol. 36.

5 Ann. A Certificate under the Hand and Seal of two Justices, that a
cap. 31. Watchman, or other Person, was killed in endeavouring to take a Burglar or House-breaker, entitles his Executor or Administrator to 40*l.*

CHAP. CV. Vide LXI.

Watermen.

2 & 3 Ph. Every Justice of Peace (by the general Words of the Statute) with- §. 1.
& M. c. 16. in the Shires next adjoining to the River of *Thames* (between
P. Botem. *Gravesend* and *Windfor*) within his several Jurisdiction hath Power
2. (upon Complaint made to him by the Overseers and Rulers of the
P. Just. Watermen and Wherry-men, or Two of them, or by the Masters of
109. any
1. am. 205. Z z
Cromp. 131.

any such Servants) to examine, hear and determine all Offences against the Statute, and to set at large him that shall be imprisoned by such Overseers or Rulers, according to this Act (if there be just Cause) and also by his Discretion to punish those Overseers and Rulers that shall unjustly punish any Person by Colour of this Act.

The Offences of Watermen against this Statute are these.

- §. 1. 1. No single Man shall be a Waterman there, unless he be an House-keeper, or an Apprentice, or retained in Service by the whole Year. ^{P. Botem.}
See 1 *Jac. c. 16.* ^{P. Ibid. 5.}
2. One of the (two) Watermen, rowing together in one Boat, must be allowed by the most Part of the eight Overseers, by Writing under their Seal, and must have used rowing there two Years before.
3. Watermen shall not hide themselves in Time of Pressing for the King's Service, &c. ^{P. Ibid. 6.}
4. Watermen shall not take for their Fare and Labour above the Prices assessed, &c. and set up in Tables in *Westminster-Hall*, &c. ^{P. Ibid. 7.} But *Quare* whether the Justice of Peace be to meddle in this. See the Statute at large.

C H A P. CVI. *Vide LXII.*

Wax.

- §. 1. ^{P. 18H.6.12.}
Price. **E**very Justice of Peace may examine and search (by his Discretion) such as do sell, or set forth to be sold, any Candles, or other Works of Wax at higher Price than after the Rate of 4 *d.* the Pound, over the common Price of plain Wax, between Merchant and Merchant, and may punish them by Forfeiture of the Work or Value thereof, and by Fine to the King. ^{P. Wax. 8. P. Just. 42. 11H.6.16. 28 El. 8.}

C H A P. CVII.

Wears.

- §. 1. ^{P. 3 Jac. 12.}
Errecting Wears. **E**very Person that shall erect any new Wear along the Sea-shore, or in any Haven, Harbour or Creek, or within five Miles of the Mouth of any Haven or Creek.
- §. 2. ^{P. 3 Jac. 12.}
Catching Fish with them. Or shall willingly take, destroy, or spoil any Spawn, Fry or Brood, or any Sea-fish in any Wear, Engine or Device whatsoever, shall forfeit 10 *l.* for every such Errecting or Spoiling. The one Moiety to the King, the other Moiety to the Prosecutor.
- §. 3. ^{P. 3 Jac. 12.}
Unlawful Nets. Any Person, which in any Haven, Harbour, Creek, or within five Miles of the Mouth of any Haven, Harbour or Creek of the Sea, shall Fish with any Draw-net or Drag-net, not three Inches Meash, viz. an Inch and a Half from Knot to Knot, except for the Taking of Swolds in Norfolk only; or with any Net with Canvas, or any other Engine or Device, whereby the Spawn, Brood, or Fry of Fish may be destroyed, shall forfeit for every Net, and every Time so doing 10 *l.* a Moiety to the

the Poor of the Place, &c. the other Moiety to the Prosecutor, to be levied by Warrant to the Mayor, &c. or one or more Justices of Peace, to the Constable by Distress and Sale, rendering the Overplus, &c. 3 Jac. 12.

C H A P. CVIII.

Weavers.

NOne using the Trade of Cloth-working, living out of a City, Borough, Market-Town, or corporate Town, shall keep above one Loom at one Time in his House or Possession, or make Profit by letting or setting a Loom, or of a House wherein a Loom is, and be let with it, upon Pain to forfeit for every Week 20s. 2 & 3 Phil. & Mar. cap. 11. §. 1. What Looms they may keep.

No woollen Weaver living out of the City, &c. shall keep above two Looms, or make Profit by any other Loom, upon Pain to forfeit for every Week 20s.

None using the Trade of a Weaver, and not Cloth-making, shall keep a Tucking-mill, or use the Trade of a Tucker, or Fuller, or Dyer, upon Pain to lose for every Week 20s.

None using the Trade of a Tucker or Fuller, shall keep or have a Loom, or make any Profit thereby, or forfeit for every Week 20s.

No Woollen Weaver living out of any City, &c. shall take any to be his Apprentice, or instruct any in his Trade, except it be his Son, or the Father or Mother have 3 l. per Annum in Lands, 5 Eliz. 4. §. 2. What Apprentices they may take. And for every three Apprentices shall keep one Journey-man; and for every Apprentice more, one Journey-man.

No Person shall use the Trade of a Weaver except he have been an Apprentice, or used the Trade seven Years on Pain of 20 l. §. 3.

Of all which Forfeitures, a Moiety to the Queen, and the other Moiety to the Prosecutor, in any Court of Record, by Action, &c. or Information. 2 & 3 Ph. & Mar. 11.

C H A P. CIX. Vide LXIII.

Wine.

EVery Justice of Peace (as it seemeth by the Words of the Statute) within the Precinct of his Office (at the Request of any Subject, to whom Denial of Sale shall be made of any Wine, and full Payment therefore offered according to the Prices set down by the Lords, &c.) may enter into the Places where such Wine shall lie, and may sell and deliver the same Wine desired to be bought, to the Person requiring to buy the same, taking the Buyer's Money towards the Satisfaction of the Forfeiture, &c. §. 1.

Note, That no Person may sell any Wine in any Town not Corporate, but by the Licence of the Justices of the Peace in open Sessions by Writing under the several Seals of every of the said Justices upon Pain of 5 l. for every Day of so offending. 7 E. 6. cap. 5. Co. lib. Entr. fol. 370. §. 2. Licences.

Finch's Case, who recovered 550l. in an Information upon this Statute, notwithstanding the Queen's Licence there, pleaded in Bar of the said Action.

And by the Statute in Towns corporate, no Person to Seal but by Licence of the Mayor, Aldermen, &c. and that under the common Seal of the Corporation upon the same Penalty. Quod nota.

But now touching * Wine Licences, see the Statute of 12 Car. 2.

* They are
vested in cap. 25.

the Crown by the Statute 22 & 23 Car. 2. cap. 6.

§. 3.
Extortion.

No Officers to be appointed by his Majesty for carrying on the Duty of Wine Licences by the like Statute of 12 Car. 2. c. 25. shall demand or receive any Fees or Rewards, or Sums of Money for, or in respect of his Service, other than 5s. for a Licence, 4d. for an Acquittance, and 6d. for a Bond, under the Penalty of 10l. A Moiety to the King, the other Moiety to the Prosecutor, by Debt, Bill, Plaint or Information, wherein no Wager, &c. Quare, An Information lying in a Sessions, if that Suit may not be prosecuted there by this Statute.

§. 4.
Mingling
or corrupt-
ing.

No Person selling or retailing Wine, shall mingle or utter any Spanish Wine, mingled with French or Rhenish Wine, Cyder, Perry, Honey, Sugar, Syrrups of Sugar or Molasses, or any Syrrups; or put in any Isinglass, Brimstone, Lime, Raisins, Juice of Raisins, Water, or any other Liquor or Ingredient; or Clary, or other Herb, or any Flesh; nor any such Person shall mingle or utter any French Wines mingled with Rhenish or Spanish Wines, Cyder, Perry, stummed Wine, Vitriol, Honey, &c. and that no such Person shall mingle or utter any Rhenish Wines mingled with French or Spanish Wines, Cyder, &c. shall forfeit, viz. Every Person selling Wine in gross, mingled or abused as aforesaid, shall forfeit for every such Offence 100l. And every Retailer for every Offence shall forfeit 40l. A Moiety to the King, the other Moiety to the Informer, to be recovered in any Court of Record by Action of Debt, Bill, Plaint or Information, whereon, &c.

§. 5.
Prices and
Penalty.

No Canary Wines, Muskadel or Alicant, or other Spanish or Sweet Wines shall be sold by Retail at above 18d. per Quart. No Gascoign or French Wines at above 8d. per Quart. No Rhenish Wines at above 12d. per Quart. And so for lesser or greater Quantities, upon Pain to forfeit for every Pint, Quart, Pottle, Gallon, or greater or lesser Measure 5l. A Moiety to the King, the other Moiety to the Prosecutor, to be recovered as aforesaid: Confirmed by Statute 13 Car. 2. cap. 7.

CHAP. CX.

Wild Fowl

§. 1.
At what
Time not
to be taken.

NO Person shall between the last Day of May, and the last Day of August, take or cause, &c. any Wild Fowl, as Ducks, Mallards, Widgeons, Teals, wild Geese, or other Kinds of Wild Fowl, with Nets or other Engines, upon Pain of a Year's Imprisonment, and to pay 4d. for every one so taken.

25 H. 8. 11. *The Justices of Peace have Power to hear and determine the Offences aforesaid: As in Cases of Trespas.* §. 1.

25 H. 8. 11. *A Gentleman that may dispend 40 s. per Annum of Freehold, may hunt them with Spaniels only, or the Long-bow.*

25 H. 8. 11. *From the last Day of March to the last Day of June, in every Year,* §. 3.
 3 & 4 E. 6. *none shall take or convey, or destroy any Eggs of Wild Fowl from the Place they are laid by the Wild Fowl, upon Pain of Imprisonment for a Year, and to lose for every Egg of a Crane or Bustard 20 d. And for the Egg of a Bitton, Heron or Shovelar 8 d. And of a Mallard, Teal, or other Wild Fowl 1 d.*

The Part of the Statute 25 Hen. 8. 11. touching taking of Wild Fowl, was repealed by 3 & 4 E. 6. 7. But it is again revived by 21 Jac. 28. which is continued by 3 Car. 1. 4. and 17 Car. 1. 4. and so is in Force at this Day.

C H A P. CXI. *Vide LXII.**Wood.*

35 H. 8. 17. *T*WO Justices of Peace (not being of Kindred, Alliance, Coun- §. 1.
 13 El. 26. *fel or Fee to the Lord or Owner of the Wood) appointed by*
 p. 8, 9. *the more Part of the Justices of Peace at their Sessions, upon Com-*
plaint of the Lord made unto them, may divide and set out the fourth
Part of the Wood, if the Lord and Commoners thereof (being first
called before them) cannot agree upon it.

15 Car. 2. *Whereas the Statute of 43 Eliz. doth not sufficiently prevent nor* §. 2.
 cap. 2. *punish the Cutting and spoiling of Woods, by this Statute, it is en-* Cutting
 Stat. 3. *acted, that every Constable and other Person in every County, City, Wood.*
or other Place, where they shall be Officers or Inhabitants, shall and
may apprehend, or Cause to be apprehended, every Person they shall
suspect having, carrying, or conveying, any Burthen or Bundle of
Wood, Poles, young Trees, Bark, mast of Trees, Gates, Stiles, Posts,
Pales, Rails or Hedgwood, Broom or Furzes. See Tit. Trespas.
And by Warrant under the Hand and Seal of any one Justice, di-
rected to any Officer, he may enter into and search the Houses,
Yards, Gardens, and other Places belonging to the Houses of any
Persons they shall suspect to have Trees aforesaid, and finding any
such Wood, &c. to apprehend the Persons suspected for cutting or ta-
king the same, and as well such Persons apprehended or taken carry-
ing any kind of Wood or other Premises, as those in whose Houses,
or other Places belonging to them, any of the same shall be found, to
carry before any one Justice of the Peace of the same County, City,
or Town Corporate. And if such Persons suspected do not give a
good Account how they came by the same, by the Consent of the Owner,
such as shall satisfy the said Justice (or within some convenient Time
to be set by the said Justice) produce the Party of whom they bought
the said Wood or some credible Witness upon Oath, to prove such Sale,
then such Persons suspected, not giving such good Account, not pro-
ducing such Witness, shall be judged as convicted, for cutting and
stealing of Woods, Underwoods, Poles, Trees, Gates, Stiles, Posts,
Pales, Rails, Hedgwood, Broom or Furse, within the Meaning of
the

the said Statute of 43 Eliz. and liable to the Punishment therein, and of this Act: viz.

§. 3.
Penalty.

Every Person, so convicted, shall for the first Offence give the Owner Satisfaction for his Damages within such Time as the Justice shall appoint, and, over and above, pay down to the Overseers of the Poor of the Parish where such Offence is, such Sum of Money, not exceeding ten Shillings, as the said Justice shall think fit: In Default of either of which Payments the said Justice may commit such Offender to the House of Correction for such Time (not exceeding one Month) as he shall think fit, or to be whipt by the Constable, or other Officer, as in his Judgment shall seem expedient.

And if such Person shall again commit the said Offence, and be thereof convicted as before, that then the Persons offending the second Time, and convicted, shall be sent to the House of Correction for one Month, and there to be kept to hard Labour: And for the third Offence, convicted as before, shall be judged and deemed as incorrigible Rogues.

§. 4.
Buying.

And whosoever shall buy any Burthens of Wood, or any the Premises; suspected to be stolen or unlawfully come by, the Justices, the Mayor or chief Officer, or any one of them, within their respective Jurisdictions, upon Complaint, may examine the Matter upon Oath: And if they find the same was bought of any suspected to have stolen or unlawfully come by the same, then any one of the said Justices or chief Officer shall and may award the Party that bought the same to pay treble the Value thereof to the Party from whom the same was stolen or unlawfully taken: And, in Default of present Payment, to issue forth Warrant to levy the same by Distress and Sale of the Offender's Goods, rendring the Overplus to the Party: And for Want of such Distress, to commit the Party to the Gaol, at his own Will, there to remain one Month without Bail.

But no Person is to be questioned for any Offence within this Act, unless within six Weeks after the Offence committed; nor if punished by any former Law for the same.

Quære, If no Owner can claim the Wood as his Own, then it seems; although the same be suspected to be stolen, no Proceedings can be on this Act.

§. 5.
Standels.

Every Owner of Coppice-wood (of twenty-four Years growth or 35H.8.17. under) for Inheritance, Life, Copyhold, or for Years, shall leave standing for every Acre, twelve Standels or Storers of Oak; if so many of Oak; if not, to be made up of Elm, Ash, Asp or Beech, to be left of those that were left standing at the last Selling; if so many; if not, of others, likely to be Timber-trees, which Storers shall not be cut till they be ten Inches square, within three Foot of the Ground, upon Pain of 30s. 4d. for not leaving, and 30s. 4d. for the Owner commanding to cut down. A Moiety to the King, the other to the Prosecutor, by Action, &c. or Information in any Court of Record.

§. 6.
Inclosure.

All Coppice and Underwoods that shall be felled at fourteen 35H.8.17. Years growth or under, from the twentieth Day of April next, after the Felling for four Years, it shall be sufficiently inclosed, and the Springs preserved from Cattle by him that hath the lawful Interest and Possession, upon Pain to forfeit 3s. 4d. for every Rod not so inclosed or preserved by the Person so bounden to it for every Month. This is enlarged to five Years, and then none but Calves and yearling Colts till six Years.

- 13 El. 25. ' All Coppice above fourteen Years growth, and under twenty-four, shall in like Sort be inclosed or preserved for six Years, under the like Penalty; and this is enlarged to eight Years, as above.
- 13 El. 25. ' No Person shall convert into Tillage or Pasture any Coppice or Underwoods, containing two Acres or more, being then Coppice or Underwood, and being two Furlongs distant from the Owner's House, or the House to which it appertains, upon Pain to forfeit for every Acre 40 s.
- 35 H. 8. 17. ' Every Person having several Woods or Coppice set with great Trees about twenty-four Years growth, shall at the Felling, leave for every Acre twelve Oaks, if so many Oaks, or else so many Trees of Elm, Ash, Asp, Beech, as make up the Number to be left standing, twenty Years after the Felling; and for seven Years after, preserve and inclose it from Destruction by Cattle, upon Pain that the Owner forfeit for every Tree lacking of that Number 6 s. 8 d. and the Owner commanding those Trees to be felled, to lose for every Tree so felled 6 s. 8 d. and for every Rod inclosed or preserved 3 s. 4 d.
- 35 H. 8. 17. ' But the Owner may take any of them for Repairs and Necessaries.
- 35 H. 8. 17. ' The Lord, Owner of the Soil where Woods grow, and others having Common, shall before Felling, call together the Tenants, and by the Consent of more Part of them, if they can agree, shall set out a fourth Part thereof: And if the Lord and Tenants do not agree, then two Justices to be assigned by the Sessions, at the Request of the Lord, being not of his Alliance, Kin, Counsel or Fee, shall call together Twelve such Commoners and Inhabitants, and under such Penalties as they think fit; and being met, and the Justices shewing the Cause of their Meeting, if the Justices, Lord, Commoners and Inhabitants, or the major Part of them cannot agree upon a Division of a fourth Part, the Justices may set out a fourth Part; and the Lord or Owner may inclose and fell.
- 35 H. 8. 17. ' Standels, Storers and Trees, shall be left upon like Penalties, as before is limited, and the Inclosure maintained, and Springs preserved seven Years from the Felling; and within that seven Years no Beast be put in or suffered to feed there, upon Pain to forfeit 4 d. for every Beast. And the Owner forfeit for every Tree otherwise felled 6 s. 8 d.
- 35 H. 8. 17. ' After such inclosing, the Tenants may use and enjoy their Common in the Residue not inclosed; and the Lord shall put no Cattle therein for the seven Years. 35 H. 8. 17. And after the seven Years it shall be left open, and used as before.
- 35 H. 8. 17. ' But by 13 El. 25. the Woods are to remain inclosed, and Springs be preserved two Years longer than by 35 H. 8. is directed upon the like Penalties.
- 1 Jac. 22. ' No Person shall fell or cause, &c. any oaken Trees, meet to be barked (where Bark is worth two Shillings a Cart-load above the Charges) except Timber for Houses, Ships or Mills; but between the first Day of April and the last Day of June, upon Pain of Forfeiture of the Bark, or double the Value thereof.
- 23 El. 5. ' No Person shall convert or imploy, or cause, &c. to Coal, or other Fewel, for the Making of Iron, or Iron Metal in any Iron-Mills, Furnace or Hammer, any Manner of Wood or Underwood, growing within twenty-two Miles about the City of London, or Suburbs; or within twenty-two Miles of the River of Thames, from Dorchester in the County of Oxford, downwards; nor within four Miles of

of the Foot of the *Downs*, betwixt *Arundel* and *Pevensey*; nor within four Miles of *Winchelsey* or *Rye*; nor within two Miles of *Pevensey*, or within three Miles of *Hastings*, upon Pain to forfeit for every Load 40 s.

No new Works shall be set up within those Distances, upon Pain to forfeit 100 l.

A Moiety whereof to the Queen, the other Moiety to the Informer, by Action, &c. or Information in any Court of Record, &c.

§ 13. The Assize of Tale-wood, Billet, Fagots, and the ordering thereof, and the Penalties therein. 43 *Eliz.* 14. 23 *El.* 5.

C H A P. CXII. Vide LXV.

Weights and Measures.

§ 1. *Two Justices.* TWO Justices of Peace (one being of the *Quorum*) may by Examination or Inquiry, hear and determine the Faults of Head Officers in Cities, Boroughs and Market-Towns, that do not twice every Year view and examine all Weights and Measures in their Towns, &c. and do not break and burn the defective. 11 *H.* 7. 4. P. Just. 92. Lam. 345.

Also two such Justices may by Examination or Inquiry, hear and determine the Faults of all Buyers and Sellers, which do not buy and sell with Weights and Measures that be lawful, *sc.* with such as be marked and sealed, *sc.* in Market-Towns, (like and equal with the King's Standard, *sc.* out of Market-Towns, Quare). Also the said Justices may break and burn all defective Weights and Measures. See *hic postea.* Ibid. & P. Weight Lam. 345.

The said Justices may fine all and every the Offenders aforesaid by their Discretion, and make Process against them, as if they were indicted of Trespas against the Peace. For the Process, see hereof in the Title *Process.* Ibid. & P. Just. 92. Lam. 345.

§ 2. *Falsely Weights.* Mayors, Bailiffs, and Head Officers of Cities, Boroughs, and Market-Towns, shall cause twice a Year, or oftner, as they think fit, all Weights and Measures there to be brought before them; and such, as upon View and Examination they shall find defective, to break and burn; and the Parties which have offended, and be found defective, shall for the first Offence forfeit 6 s. 8 d. for the second 13 s. 4 d. and for the third 20 s. to the Mayor, Bailiff, or other having Jurisdiction and Correction; and for further Punishment, to be set on the Pillory. 11 *H.* 7. 4.

Now for the readier Direction of the Justices of Peace herein, I thought good to set down the just and certain Contents of all (or most Sorts of) Weights and Measures, that so they may the better Judge what be lawful or defective, and what not.

Vera fides, pondus, mensura, moneta sit una. Ac status illius totius orbis erit. By the Statute of *Magna Charta*, c. 25. there shall be but one Weight and one Measure of Corn, Wine, Beer and Ale; and one Yard throughout the whole Realm, (*sc.* according to the King's Standard in the *Exchequer*.) And this Statute of *Magna Charta* hath since herein been confirmed by many Parliaments, *viz.* by the Statutes of 14 *Ed.* 3. 12. 25 *Ed.* 3. 10. 27 *Ed.* 3. 10. 34 *Ed.* 3. 5. 13 *Rich.* 2. 9. 8 *H.* 6. 5. 7 *H.* 7. 4. 11 *H.* 7. 4. and 12 *H.* 7. 5. as thereby appeareth. 9 *H.* 2. 25. P. Weight 1. P. 7.

There

17 Car. 1.
c. 19.

There shall be one Weight, one Measure, and one Yard, according to the Standard of the Exchequer, throughout all the Realm, as well in Places priviledged as without, and every Measure of Corn shall be striked without heap: And whosoever shall keep any other Weight, Measure, or Yard, whereby any Corn, Grain, or other Thing is bought or sold, shall forfeit for every Offence five Shillings, being thereof convicted, by the Oath of one sufficient Witness, before any Justice of Peace, or Head Officer of City, Town, or Place where the Offence is done, to be levied by the Church-wardens or Overseers of the Poor of the Parish, to the Use of the Poor of the said Parish, by Distress and Sale of the Offenders Goods, and for want of Distress, to be imprisoned without Bail until payment. And any Justice of Peace, upon Suit against him, for any Thing done upon this Act, to plead the General Issue, and give the Act in Evidence, and to have treble Costs, if unjustly vexed.

The Clerk of the Market, his Duty follows.

The Clerk of the Market of the King's Household, shall execute his Office only within the Verge of the King's House, and no where else. And all Mayors, and Head Officers of Towns, Lords of Liberties, according to their Liberties and Jurisdictions, may execute their Offices accordingly. 17 Car. 1. cap. 19. §. 3. Jurisdiction.

If any Clerk of the Market shall seal or allow any Weights or Measures, other than according to the Standard in the Exchequer, or shall refuse to allow such as are according to it, paying only such Fees, as by Statute or Custom are allowed, they, their Deputies, or Agents, shall forfeit 5*l.* to be levied as aforesaid. §. 4. Standard.

If any Clerk of the Market of the King's Household, or others, having Power to execute the Office, shall take, by Colour of his Office, any Fines or Fees, other than such as are allowed by Statute or Custom, or shall take any Fine, Fee, Reward, or Consideration for making, signing, or Examination of any Weights or Measures, formerly marked or sealed; or shall set any Fine or Amendment, without legal Trial of the Offence, or otherwise misdeemean himself in his Office, and be convicted, shall for the first Offence forfeit 5*l.* for the second 10*l.* for the third, and every other Offence 20*l.* to be levied as aforesaid to the Use of the Poor. 17 Car. 1. c. 19. §. 5. Extortion.

22 Car. 2.
cap. 8.

The Measure called *Water Measure* is thereby continued where the same was then used. But by 22 Car. 2. the same Clause, as to the Measuring of Corn and Salt, is repealed. §. 6. Water Measure. Corn, Salt.

If any Person shall sell Corn or Grain, ground or unground, or Salt by any other Bushel than *Winchester* Measure, containing eight Gallons stricken by the Brim, and sealed, shall forfeit 40*s.* to be levied as by the Act of 17 Car. 1. is directed, 22 Car. 2. c. 8. See Tit. Salt, this is altered.

If any Mayor or Head Officer wilfully permit any Person to sell by any other Measure than as aforesaid; or upon complaint, shall not punish the Breach of that Statute, shall upon Conviction by Presentment or Indictment at the general Quarter-Sessions of the County, forfeit 5*l.* one Moiety to the Informer, the other Moiety to the Poor, to be levied by Distress and Sale, and for want of Distress, Imprisonment until Payment. 22 Car. 2. cap. 8. §. 7. Neglect to punish.

If any Clerk of the Market shall neglect or refuse to seal or mark any Bushel, half Bushel, or Peck, duly gaged, he shall for-

- feit for the first Offence 5*l.* for the second, and every other Offence 10*l.* to be levied as aforesaid. 22 *Car. 2. cap. 8.*
- §. 8. *Fee.* If the Clerk of the Market of the King's House, within the Verge, shall take more than the lawful and accustomed Fees; or if any other shall take above one penny for the Sealing and Marking a Bushel, a Half Penny for a half Bushel or Peck; and a Farthing for a Gallon, Pottle, Quart, Pint or half Pint, upon due Proof and Conviction, shall incur the Penalties in 17 *Car. 2. c. 19.* 22 *Car. 2. cap. 8.*
- §. 9. *Providing Measure.* At the Charge of such Person as hath the Toll and Profit of the Market before the twenty 9th of September, 1670. shall be provided one Measure of Brass, and chained in the Market-Place, or else forfeit 5*l.* to be recovered as by that Act is directed. One Moiety to the Poor, the other to him that sues. 22 *Car. 2. c. 8.*
- §. 10. *Search.* Every Constable shall search if any use any other Measure, or shall strike the same otherwise than that Act directs, or buy or sell by unsealed Measures; and if he find any unsealed, to break it, and to present those Offences to the next private or quarterly Sessions. 22 *Car. 2. cap. 8.*
- §. 11. *Forfeiture.* None shall buy Corn or Salt by the Bagg, or unmeasured, being thereunto required, or in any other Manner than is by the Act of 22 *Car.* directed, and that without shaking the Bushel; or if he do, shall besides the Penalties in the former Act, forfeit the Corn or Salt so sold, or the Value thereof to the Persons complaining. 22 & 23 *Car.*
- §. 12. *Proof.* Upon Complaint to any Justice that any Corn or Salt is sold contrary to the Act, the Defendant must make it appear by one Witness, that he bought the same according to that Act, or else to forfeit, as by the former Act is directed, to be levied by Distress and Sale, *prout.* One Moiety to the Poor, the other to the Informer. 22 & 23 *Car. 2.*
- Sealing.* Where there is no Clerk of the Market, the Head Officer, or Person having the Profit of the Market, may seal Measures. 22 & 23 *Car. 2.*
- And yet notwithstanding the Statutes of Magna Charta, c. 25. *Rast. 8. and the several Confirmations thereof, and the said Statute 17 Car. Diu. fol. 1. c. 19.* there always hath been, and still are two kinds of Weights used in England, and both warrantable: The one by Law, and the other by Custom; but they are for several sorts of Wares or Commodities; for there is Troy Weight, and Averdupois.
- §. 13. *Sorts of Weights.* 1. Troy Weight is by Law; and thereby are weighed Gold, Silver, *Ibid.* Pearl, precious Stones, Silk, Electuaries, Bread, Wheat, and all manner of Grain or Corn is measured by Troy weight. And this hath 10 the Pound 12 Ounces, or 20*s.* Sterling weight, and no more. It is called by some, Libra medica; by others, Libra & uncia Trojana.
2. Averdupois Weight is by Custom (yet confirmed also by Statute,) *Rast. 8. and thereby are weighed all kind of Grocery Wares, Physical Drugs, & 14. Butter, Cheese, Flesh, Wax, Pitch, Tar, Tallow, Wools, Hemp, c. 10. 27 El. 3.* Flax, Iron, Steel, Lead, and all other Commodities not before named, but especially every Thing which beareth the Name of Garble, and whereof issueth a Refuse, or Waste. See *Rast. 8. fol. 527. and the Book of Assize, Impres. 1597. This is called Libra Civilis.*
- The Word Averdupois in French, is as much as to say, to have full Weight, Habere pondus. Geo. Agricola in his Learned Tract. De

ponderibus & mensuris, pap. 339. saith thus of both these Kinds of Weights, Medica & civilis libra numero non gravitate unciarum differunt.

And this hath to the Pound 16 Ounces, or 25 s. sterling Weight.

Also in this *Averdupois* Weight, unto every Hundred is allowed twelve Pounds Weight; so as one Hundred and twelve Pounds make a Hundred Weight, six and fifty Pounds make half a Hundred, and twenty-eight Pounds make a Quarter.

27 Ed. 3. Also all Manner of *Averdupois* shall be weighed by lawful Weights,
10. sealed according to the Standard of the *Exchequer*. P. Weights 14.

Averdupois Weight.	14 Ounces and a half, and two Pence Weight Troy,		Measures of Corn, according to Averdupois Weight.
	do make 16 Ounces of <i>Averdupois</i> .		
	7 { Pounds or Pints }	<i>Averdupois</i> make the Gallon.	
	14 { Pounds or Pints }	<i>Averdupois</i> make the Peck.	
	56 { Pounds or Pints }	<i>Averdupois</i> make the Bushel.	

§. 14.
Compared.

Troy Weight.	Pints or Pounds,	5120	512	256	64	16	8	4	Measures of Grain according to Troy Weight.
	Quarts,	2560	256	128	32	8	4	2	
	Pottles,	1280	128	64	16	4	2	1	
	Gallons,	640	64	32	8	2	1		
	Pecks,	320	32	16	4	1			
	Bushels,	80	8	2	1				
	Coombs,	20	2	1					
	Quarters,	10	1						
		Ten Quarters of Corn is a Last.							

Beer Measures.

Ale Measures.

Pints,	288	144	72	8	4	2	256	128	64	8	Measures of Beer and Ale.
Quarts,	144	72	36	4	2	1	128	64	32	4	
Pottles,	72	36	18	2	1		64	32	16	2	
Gallons,	36	18	9	1			32	16	8	1	
Firkins,	4	2	1				4	2	1		
Kilderkins,	2	1					2	1			
Barrel,	1						1				

See for Corn, Beer, and Ale, more fully in that which followeth.

Troy Weight, 12 H. 7. 15. 6 51 H. 3.	Thirty-two Wheat Corns, taken in the midst of the Ear, weigheth one penny <i>Sterling</i> .		\$ 15. <i>Troy</i> <i>Weight</i> .
	Twenty-pence <i>Sterling</i> , maketh the Ounce <i>Troy</i> .		
	Twelve Ounces maketh in	{ Weight one Pound <i>Troy</i> . Measure one Pint.	<i>Measures</i> .
	Two Pints, or Pounds, maketh the Quart.		
	Two Quarts maketh the Pottle.		
	Eight Pints	} maketh a Gallon.	
	Four Quarts		
Two Pottles			
Eight Quarts maketh the Peck.			

A a a 2

Sixty

Troy Weight, 12 H. 7. 15. & 51 H. 3.	Sixty-four Pints	} maketh the {	Bushel or Firkin.
	Thirty-two Quarts		
	Eight Gallons		
	Four Pecks		
	Sixteen Gallons	} maketh the {	Kilderkin. Half Barrel. Rondlet.
	Two Firkins		
	Two Hundred fifty-six Pints		
	One Hundred twenty-eight Quarts		
	Thirty-two Gallons	} maketh the {	Coomb or Barrel.
	Four Firkins		
	Two Kilderkins		
	Four Bushels		
Troy Weight	Five Hundred and twelve Pints	} maketh the {	Quarter or Hogshead.
	Two Hundred fifty-six Quarts		
	Sixty-four Gallons		
	Eight Firkins		
	Four Kilderkins		
	Two Barrels		
So the	Eight Bushels		
	Pint and Pound	} are of like Content.	
	Firkin and Bushel		
	Barrel and Coomb		
	Hogshead and Quarter		

Also the Statute of 23 H. 8. cap. 4. doth limit the Weight of every of these three Vessels here next named, being empty as followeth, *scil.*

1. The Barrel
 2. The half Barrel or Kilderkin
 3. The Firkin
- } must weigh (being empty) $\left\{ \begin{array}{l} 26 \\ 13 \\ 6\frac{1}{2} \end{array} \right\} \text{lb.}$

Measures of Corn.

All kind of Corn and Grain is measured by *Troy* weight.

By the Statute the Bushel must contain eight Gallons, or sixty-four Pounds or Pints of Wheat, 31 Ed. 1. 12 H. 7. 4. P. *Weights.* 2 *Raf-tal.* 34. *Din.*

And yet by the Book of *Affize*, imprinted *An. Dom.* 1597. the Bushel is to contain fifty-six Pounds (or Pints) of *Averdupois* Weight (which is three Pounds or three Pints and eight Ounces *Troy*, more than the Statute or *Troy* Weight.) For fifty-six Pounds or Pints *Averdupois* Weight, and sixty-seven Pounds eight Ounces *Troy* Weight, do justly agree. See the Book of Affize.

9. 16. Also eight Bushels stricken make the Quarter of Corn. 11 Hen. 7. P. 3. 15 R. 2. 4
4. 25 Ed. 3. 10. & 34 Ed. 3. 6. P. 1.
3. 10. And all Purveyances shall be by such Measure, *scil.* stricken without heap. *Ibid.* 34 E. 3. 6.

Water Measure, sold within Ship-board, shall contain five Pecks P. 9. stricken to the Bushel.

No Person shall buy or sell with a Bushel, except it be sealed and P. 59. marked by the Officer, and according to the King's Standard.

But Note, That in many Places and Countries the Measure of Corn doth much differ, and the Bushel in one Place is greater than in another.

9 H. 6. f. And yet in the Measure of Corn *Consuetudo loci est observanda*, if it
36. be a Custom exceeding all Memory, and used without any lawful In-
30 Aff. pl. terruption; for such Time and Usage sufficeth for a Law, though re-
38. gularly Custom or Prescription against a Statute is not good, except
Co. Lib. that such Customs and Prescription be also confirmed by Statute, or
113, 115. that they be saved by another Statute. See *Br. Presc.* 2. 50. *Pl.* 36.
b. & 8 H. 7. fol. 4. *b.* *Doct.* & *Stud.* 47.

But this Difference of Measure of Corn comes partly from the Diver-
sity of Clerks of the Market (there being a Clerk of the Market for the King's House, another for the Prince, another for the Dutchy; o-
thers in Corporate Towns, and others belonging to the Lords of Li-
berties) and partly from the Abuse of divers Corporate Towns and
other Privileged Places or Liberties, where they by usurped Custom
(without any good Warrant of Law) have used to have, and to buy
by such Measures. And where the Clerk of the Market for the King
hath forborn or neglected to meddle, in regard perhaps of their Cor-
poration, Liberty, or some other respect. But this Abuse two Justices
of Peace (the one being of the *Quorum*) may reform, *sc.* Two Ju-
stices of Peace of the County, where there be no Justices of Peace
within that Corporation, &c.

Also the Clerk of the Market for the King's House may reform
this in all Places within the Verge. 27 H. 8. c. 24.

And yet by the Words of the Statutes of 25 E. 3. c. 10. & 34
E. 3. c. 6. the Rents and Farms of Lords, shall be measured by such
Measures as they were wont to be, whether it were by heaped Measure,
or greater Measure than the Statute appointeth.

And Note, that the Clerk of the Market shall carry with him all
his Weights and Measures signed according to the Standard of the
Exchequer, 16 Rich. 2. c. 3. And the Justices of Peace may, yea,
ought, to sit with the Clerk of the Market at his Coming into the
Country, &c.

Sir *Francis Harvey* hath often delivered in his Charge at *Cambridge*
Assizes, these Directions, *sc.* That one Justice of Peace at the least
ought to sit with the Clerk of the Market, to see that the King's Sub-
jects be not wronged. And that the Clerk of the Market ought
to have with him his Directions out of the *Exchequer*. And that
he may take no Money for any Bills, &c. and that he ought to
seal no Bushel, or other Measures or Weights, but once (and not
Yearly as they use to do:) And that if after the first Sealing, he shall
take any Thing for the Sealing thereof again, or for the shewing
thereof, &c. it is Extortion; yea, it is one of the greatest Oppressi-
ons (saith he) for that it concerneth almost all Men.

It was resolved *Nemine contradicente* by all the Justices, M. 39
& 40 El. That if the Clerk of the Market claim Fees for examin-
ing and seeing any Bushels or other Things before sealed, the same was
a great Extortion, and no Fee is due unto him; therefore, for such
seeing and examining, is to no other End than to find and discover
Abuses in Weights and Measures. And those that they find false, their
Duty is to damn and reform them, and upon lawful Presentments
to punish the Offenders by *Amerciaments*, which belong to the
King. And this agrees with the Statute of 13 R. 2. cap. 4.
And

And if such Use hath been through Covetousness or Greediness of corrupt Officers, that Use may not make a Law. Which Case you may see *Moor Rep. p. 523.*

The Clerk of the Market's Duty is to take Charge of the King's Measures, and to keep the Standard of them, that is, the Examples and Patterns of all the Measures that ought to be throughout the Realm, as of Ells, Yards, Quarts, Pottles, Gallons, &c. of Weights, Busbels, and such like, and to see that all Measures in every Place be answerable to the said Standard or Pattern, Flet. 1. 1. c. 8, 9, &c. And he is to have with him, when he goeth to assay Weights and Measures signed according to the Standard, and none other his Weights and Measures. 16 R. 2. c. 3.

§. 18.
Bread.

For the Assize of Bread, I refer you to the Books made for the Assize thereof, and will only set down some short Observations therein.

1. All Sorts of Bread ought to be weighed by *Troy Weight*.
2. *Post septem dies panis non ponderetur.*
3. The Bakers shall not sell to any Victualler, &c. to be retailed, but only thirteenth Penny-worth for twelve Pence, as well Man's Bread as Horse Bread.
4. Every Baker shall have a Mark of his own for his Bread. *Poulton Statutes at large, p. 111. & Rast. Weights 7.*
- 5 Every Sort of Bread shall be weighed according to the Price of the middle Sort of Corn.
6. No Man shall be a common Baker, except he hath been an Apprentice to that Trade by the Space of seven Years at the least.
7. The Statute doth appoint three Sorts of Bread to be made and sold to the Subjects, *viz.* white Bread, Wheaten, and Household-bread, besides the Horse-bread.
8. The Bakers of Cities, Boroughs, and Corporate Towns, shall have 6*s.* Allowance for the baking of every Quarter of Wheat, over and above the second Price of Wheat in the Market.
9. Bakers inhabiting out of Cities, Boroughs, and Corporate Towns, shall have 4*s.* in Allowance for his Charges in baking of every Quarter, &c.
10. But Foreigners Bread shall weigh six Ounces in the Penny Loaf, more than the Town-dwellers, for that they bear not such Scot and Lot as the others do.

§. 19.
Bakers and
their Punishment.

11. Lastly, for Horse-bread, that three Horses Loaves be sold by the Baker for a Penny, 13*d.* for 12*d.* and every Loaf to weigh the full Weight of a Penny White Loaf, at what Price soever the Wheat be sold.

For the Punishment of the Bakers for their unlawful Bread; *Quære*, Whether they shall only be amerced, &c. after Indictment and Conviction of their said Offence; or that the Justices of Peace (or sworn Officers in Leets) may take away their unlawful Bread, and give it among the Poor, as Officers in Corporate Towns are enabled or appointed to do in the End of the Book of Assize, Imprinted *Anno 1597.* And all Justices of the Peace are there willed and required to be aiding and assisting to the said Officers therein. But by the Statutes of 51 *H. 3.* & 13 *R. 2.* 8. Bakers and Brewers being convicted for not observing the Assize the first, second and third Time, they shall be amerced according to the Offence (if it be not grievous.) But if the Offence be grievous, or often, then shall they suffer Punishment of the Body without Redemption (or remitting of the

Of-

Offence either for Gold or Silver) *sc.* a Baker to the Pillory, and the Brewer to the Tumbrel (now called *The Cucking Stool*, as it seemeth by Mr. Lambert 62. *Minsbaw* taketh Tumbrel for a Dung-Cart) or to some other Correction. See another Statute concerning Bakers and Brewers, and their Punishments, and to the same Effect made *incerto tempore*, c. 2. & 6. *Poulton* Statutes at large fol. 111.

All Process and Proceedings upon Indictments preferred against Bakers for Breach of Assize of Bread were staid, for that it was doubted, whether this Court hath Jurisdiction to enquire, hear and determine the said Offence. Ord. Scff. Par. Middlesex 6 Dec. 7 Car.

Note, that within every Leet or Market there ought to be a Pillory and a Tumbrel to punish the Bakers and Brewers that offend, &c. *Fitz. Leet* 12. And for want thereof, the Lord of such Leet or Market shall make a Fine to the King. *Cro.* 149.

Also they which have the Keeping and Correction of the Assize of Bread and Beer, if they have not a Pillory and a Tumbrel to punish Bakers and Brewers that are faulty, they shall forfeit their Franchise. *Cro.* 148.

Also a Leet may be seized into the King's Hands, if the Steward there shall take Money to spare the Punishment of the Tumbrel, where one shall offend in the Assize of Bread or Ale. *Libr. Intr. Cromp.* 181.

The Millers Toll-dish also must be according to the Standard.

Now Millers are to take for the Toll but the twentieth Part, or the 24th Part, according to the Strength of their Water, and Custom of the Realm. Stat. 3 E. 1. *de Victulariis. Rast. Tit. Weights, Diu.* 7. §. 20. Millers.

And yet in some Places the Millers do claim and take the 16th Part; and where the Custom hath been so used Time out of Mind, it seemeth good and warrantable. *Tamen quare.*

But the Miller ought to take but one Quart for grinding of one Bushel of hard Corn, and if he fetch and carry back the Grist to the Owner, he may take two Quarts of hard Corn; and this hard Corn is intended of Wheat, Rye, Meslin (which is Wheat and Rye mixed.) And for Malt, the Miller shall take but half so much Toll as he taketh for hard Corn, (*sc.* one Pint in the Bushel) for that Malt is more easily ground than Wheat or Rye: But if the Miller do fetch to his Mill, and carry back the Malt to the Owner's House, then the Miller also shall have double Toll. See *Cromp. Author des Courts*, 221, & 224.

Note, That Millers are not to be common Buyers of any Corn, to sell the same again, either in Corn or Meal: But ought only to serve for the grinding of Corn that shall be brought to their Mills.

Measures of Wine, Beer and Ale, &c.

18H. 6. 17
P. Wine,
13.
1R. 3. 13.

Wine,	} their Measure is all one <i>sc.</i> the	Rondlet, 16 and di.	} Gallons.
Oil, and		Barrel, 32 and di.	
Honey,		Hogshead, 63	
		Pipe, 126	
		Tunn, 252	

§. 21.
Measures
of Liquids.

Yet for Honey the Assize is altered to 32 Wine-gallons the Barrel, 16 Gallons the Kilderkin, &c. 23 El. 8. P. Wax, 6.

Beer;

Beer; the Measure thereof is as followeth, *scil.* the

Firkin,	9	}	Gallons.
Kilderkin,	18		
Barrel,	36		

23 H. 8. 4.
P. Coop. 2

And so Beer Measure containeth in the Barrel four Gallons more than Wine or any other Vessel.

Ale; the Measure thereof is as followeth, *sc.* the

Firkin,	8	}	Gallons.
Kilderkin,	16		
Barrel,	32		

§. 22.
Coopers.

No Cooper shall make any other Vessel for Beer or Ale, to be sold within this Realm, of any greater or lesser Number of Gallons than is aforesaid, unless he shall cause to be marked upon every such Vessel (of greater or lesser Number of Gallons) the true and certain Number how many Gallons every such other Vessel shall contain. 23 H. 8. c. 4.

Also no Brewer of Beer or Ale shall put the Beer or Ale to Sale, to be spent within this Realm, in any other Barrels, Kilderkins, Firkins, or other Vessels of Wood, other than shall be marked by a Cooper, and whereof every Vessel shall contain and hold the Number of Gallons aforesaid, of full and just Measure, or above, and not under that Measure. *Ibid.*

The Wardens of Coopers in all Cities and Boroughs where there be such Wardens, and in all other Boroughs and Towns the Mayor, Sheriffs, Bailiffs, Constables or other Head-officers, may search and gage all such Vessels (made in such City or Town) whether they bear their true Contents, as aforesaid; and if they find any Vessel defective, they may mark or amend the same, according to the true Content, or else may cause the same to be burned. *Ibid.*

Boats.
Keels.
Wains.

He who shall cause the Marks of Boats, Keels, Wains, &c. to 6 & 7 W be removed or altered, thereby to frustrate the Intent of the Statute cap. 10. 6 & 7 Willi. shall upon Proof by one Witness, before one Justice, forfeit 10 s. to be levied by a Warrant, &c. by Distress and Sale, &c. and for want of Distress, to be committed for three Months, and the Boats, &c. to be measured and marked again.

It appeareth by Mr. *Crompt.* that it was agreed by the Justices, that the Measure of Wine and Ale should be all one, but now by the Stat. of 1 Jac. c. 9. Ale and Beer shall be sold by Retail by one and the same Measure, *sc.* by the Ale-quart. Crompt. 94. b. P. Aleh. 7.

§. 23.
Vessels.

And for the Prices of all Vessels of Ale and Beer, by the Stat. 23 H. 8. c. 4. two Justices of Peace might assess the Prices thereof, and that no Brewer shall take for any Barrel, Kilderkin or Firkin, &c. of Ale or Beer, but after such Prices and Rates as shall be assessed by the said Justices of Peace in the County, or by the Mayor or their Head-officers in Corporate Towns, &c. But now by the Stat. 8. El. c. 9. the Assessment of the Prices thereof by the Justices, shall be by the Justices, or the more Part of them, being present at the *Easter* Quarter-Sessions, and only of such Vessels as shall be made or sold out of Cities or Corporate Towns,

§. 24.
Sope.

Sope, the Barrel, half Barrel and Firkin, shall be of the same Content that Ale is, *sc.* the Barrel 32 Gallons or above, and the empty Vessel not to be in Weight above 26 Pounds; the empty Firkin not to weigh above 6 Pounds and a half, and to contain 8 Gallons or above of full and just Measure. 23 H. 8. 4. P. Sope 1.

Butter also shall be of the same Measure that Sope is of. See be-^{Butter} fore Tit. *Butter*, and the Statute of 14 *Car. 2. cap. 26.*

^{P. Weight} 6. Cheese, a Weigh of Cheese must contain 32 Cloves, and every Clove ^{Cheese} 8 li. of *Averdupois* Weight: Although the Statute 9 *H. 6. 8. Rast. 28. diu.* and the Book of Assize, imprinted 1597, seem to make 7 li. to be a Clove. And yet by the Book of Assize, the Weigh of *Suffolk* Cheese must contain 256 li. or 12 Score and 16 li. of *Averdupois* Weight (and their Barrel of Butter is of like Weight with the first:) But the Weigh of *Essex* Cheese or Butter is 300 li. Weight, after the Rate of five Score and 12 li. to the Hundred, which is 336 li. or 16 Score and 16 Pounds of *Averdupois* Weight.

Beef and other Flesh are 16 Ounces *Averdupois* to the Pound, and ^{Flesh} eight of them Pounds to make the Stone, except where the Usage of the Country require more Pounds to the Stone. *Book of Assize.*

Herrings, the Barrel, half Barrel and Firkin, shall be the same ^{Fish} Content that Ale is, *scilicet*, the Barrel 32 Gallons, &c. 11 *H. 7. c. 23, and 13 El. 11. P. Fish 9.*

Also Herrings are sold by Tale, *sc.* six Score Herrings shall go to the Hundred, ten Hundred to the Thousand, and ten Thousand to the Last. 31 *E. 3. c. 2.*

Salmon and Eels. See the Contents of their Vessels, Stat. 11. *H. 7. cap. 23. P. Fish. 8. 10.*

^{33 E. 3. 9.} Wool, 14 Pound Weight goeth to the Stone of Wool, 28 Pounds ^{Wool} goeth to the Tod, and 26 Stone goeth to the Sack. 11 *H. 7. 4. P. 3. 31 E. 3. c. 18.*

Hemp, 20 li. Weight maketh the Stone. *P. Cables, 2. 21. H. 8. Hemp. c. 12.*

Sugar, Spices and Wax 8 li. maketh the Stone, and 13 Stone and a ^{Sugar} half, or 100 li. maketh the Hundred. See the Stat. *de Comp. ponder. Spices, Wax, Rast. Weights 8.*

Hops, five Score and twelve Pounds maketh the Hundred. ^{Hops}

Lead, the Content of the Pound, the Stone and the Load. See ^{Lead} *Rastal, Weights 8.*

Leather, the Content of the Dicker and the Last. See *Rast. Leather, Weights 8.*

The Contents of Iron, Glass, Linen-cloth, and divers other Things. ^{Iron, Glass} See the Stat. *de Compos. ponder. Rast. 8.*

All other Commodities of Tale or Number are sold by the Hundred.

Whereof { *Cattle and Fish* are sold six Score to the Hundred, and yet the Hundred of Hard-fish must contain eight Score, *Rast. 8.* Also all other headed Things, as *Nails, Pins, &c.* are sold six Score to the Hundred.

All other Things have but five Score to the Hundred.

^{Fuel 1.} For the Assize of Fuel, *scil.* of Cole, Tall-wood, Billet and Fagot, ^{Fuel} see the Stat. of 7. *Ed. 6. 7. 43 El. 14.* A Sack of Coles is four Butrels.

Timber well hewn, and perfectly squared, fifty Foot thereof maketh ^{Timber} the Load.

Lath shall contain in Length five Foot, in Breadth two Inches, and ^{Lath} in Thickness half an Inch.

Tile, six Score to the Hundred: As for the Assize thereof, (*scil.* ^{Tile} the Length Breadth and Thickness thereof,) see Statute 17 *Edwardi 4. cap. 17. P. Tile 2.*

A Bale of Paper is ten Ream, a Ream is twenty Quires, a Quire is ^{Paper} twenty five Sheets.

A Roll of Parchment is five Dozen or sixty Skins,

B b b

Three ^{Parchment}

§. 25. Three Barly-Corns measured from End to End (or four in Thick-
 Measures of Length. nefs) make one Inch. P. Weight 4.
 Inch. Four Inches make a Handful. 27 H. 8. 6.
 Handful. Twelve Inches make a Foot.
 Foot. Three Foot, a Yard.
 Yard. Three Foot and nine Inches make an Ell.
 Ell. Five Foot do make a Geometrical Pace.
 Pace. Seven Foot make a Fathom.
 Fathom. Five Yards and a half (which is 16 Foot and a half) make a Pole,
 Pole. Rood or Pearch. *Ibid.*

And yet by the Usage of many Countries the *Pole* doth vary, for in some Places it is 18 *Foot*, and in some Places 21 *Foot*, and in other Places 24 *Foot* go the *Pole*; and there if a Man sell a certain Number of Acres of Wood, &c. it shall be measured according to the Usage of the Country there, and not according to this Statute, for herein *consuetudo loci est observanda*. See *Crompt. des Courts*, fol. 32, & 222.

Corn. The same Reason may seem to hold of Measures of Corn by the Bushel. See a little before. Co. 6. 67. 47 Ed. 3. f. 18.

Master *Osborn* writeth, that the Measure of 18 Foot to the Perch (or Pole) is commonly called *Wood-land-measure*; 21 Foot to the Pole is called *Church-measure*, (*sc.* of Land which now doth or formerly did belong to the Church) and twenty-four Foot to the Pole is called (and that rightly) *Forrest-measure*.

Note, That the Clerk of the Market may enquire of the Pole or Perch whereby Land is measured, as well as of other Measures. *Crompt. Author. des courts*, 221. But the Justices of Peace are not to meddle therewith, especially out of their Sessions.

Sealed Measures. Also note, That no Measure shall be sealed but the Bushel, Half-Bushel, Peck, Gallon, Pottle, Quart and Pint. *Crompt. fol. 222. tamē quare*

Furlong. Forty Pole in Length make a Furlong.

Mile. Eight Furlongs (or 320 Pole) make an *English Mile*.

Note, That our *English Mile* contains 280 Foot more than the *Italian Mile*, the *Italian Mile* being of 1000 Paces, and five Foot to a Pace, and so the *Italian Mile* is in Length 5000 Foot, whereas the *English Mile* is 5280 Foot in Length, 1760 Yards.

Act. Forty Pole in Length and four in Breadth (or 160 Pole do make) an Acre. Stat. *Composit. ulnarum*, & Stat. 34. Ed. 1. P. Weight 4 Co. 9. 124.

Plow-land is 50 l. per Annum. And by the Opinions of Mr. *Cambden*, fol. 339, and *Hollinshead*, p. 13 *impr.* 1586.) one hundred Acres is a Hide of Land; but yet (it seemeth) that a Hide of Land or Plow-land, or Carve of Land, (which are all one) are not of any certain Content. See hereof before, Tit. *Highways*.

Librata terra containeth four Oxgangs and every Oxgang 13 Acres.

Min. A Yard-land containeth in some Places more, in some other less.

And yet Mr. *Norden*, in his *Surveyors Dialogue*, Page 59. saith, that every Plow-land containeth commonly 120 Acres; and every Plow-land is four Yard-land (in Latin called *quatrona terra* or *virgata terra*) every Yard-land containeth thirty Acres; and yet after some Computation, every Yard-land containeth but 20 Acres, and in some Places 24 Acres; and this is the common Account with us on the East Part of *Cambridgeshire*.

Now that I have set down the Contents of most Weights and Measures, you must farther observe.

11. H. 4. First, That in every County (in the principal or Shire-Town there §. 26.
12. H. 7. 5. are (or ought to be) Standards of *Brass for Weights and Measures*, ^{Standard} in every
P. 7. (*sc.* for the Bushel and Gallon) according to the King's Standard of ^{Shire-town} his Exchequer, there to remain with the chief Officers of the same Town; according to the scantling of which every City, Borough and Market-Town within the same County ought to make them common Weights and Measures, to be marked by him that keepeth the Standard.

11. H. 6. 8. Also in every City, Borough and Market-Town, there ought to be ^{Market-Town}
8. H. 6. 5. a common Balance, and a common Bushel, and Weights sealed, and
P. 5. 11. according to the Standard in their Shire-Town (as aforesaid) upon Pain to every City 5 *l.* to every Borough 5 *l.* and to every Market-Town 40 *s.* for their Defaults.

11. H. 7. 4. Also no Man within any City or Market-Town ought to buy or sell
P. 9. 7. with any Weights or Measures except they be sealed and marked in Form aforesaid (*scil.* according to the King's Standard, and by the Officers in whose Possession the King's Standard remaineth:) Nor any other Person out of a Market-Town, except their Weights and Measures be like and equal with the Standard. See *Rastall, fol. 531. c. diu. 33.*

See Ra. And yet it seemeth by the Statute 31 *Ed. 1.* & 8 *H. 6. 5.* (*Rastall, Weights*
diu. 315. *diu. 3. & 26.*) that no Man (though out of a Market-Town) shall ^{and Mea-}
26, 29, 32. use Weights or Measures, nor other Thing in the Place of Weights or ^{ures seal-}
43. 2. 7. E. Measures that is not sealed according to the King's Standard, upon
2. c. 20. Pain to forfeit the Value of the Goods weighed or measured, and two
8 H. 6. c. 5. Years Imprisonment, and to be fined and ransomed, and yield *quadruple*
15 R. 2. c. 9 Damages. See *Rastall, Tit. Weights, & Crompt. 94. & stat. in-*
certi temporis, ca. 8. Houlton, Stat. at large, Pag. 112.

The Officer that keepeth the Standard (in the Shire-Town) shall mark and seal other Weights or Measures to all other the King's Subjects that shall require it; and they shall take for the marking of the
21 H. 7. 4. Bushel but 1 *d.* and for all other Measures but an Half-penny; and
P. 8. for Weights, for every hundred Weight 2 *d.* and for half an hundred Weight an Half-penny, and for every Weight under, but a Farthing.

11 & 12 W The Sub-commissioners or Collectors of the Excise, not providing or
cap. 15. procuring a substantial *Ale Quart* and *Ale Pint* within their respective Divisions, forfeit 5 *l.* to the Use of the Poor, to be levied by Distress.

The Chief Officer of every City, &c. or Market-Town neglecting, or upon Request refusing to stamp and mark the *Quarts* and *Pints*, forfeits likewise 5 *l.* to be levied and employed, *ut supra*; the Conviction may be by one Witness, and the Prosecution must be within 30 Days, &c.

1 Annæ. Selling in any other Water-Measure than according to the Statute
cap. 15. 1 *Anna. cap. 15.* forfeits 10 *s.* to be levied by Distress and Sale; one half to the Informer, the other to the Poor. water measure

By the said Statute 1 *Anna* 'tis enacted, that Water-measure shall be round 18 Inches and an half Diameter, and 8 Inches deep and no more, and so in Proportion for any greater or lesser Measure; and the Measure by which Apples and Pears are sold shall be heaped as usually.

He who buys or sells by any other Measure, forfeits 10 *s.* to the Informer and the Poor, &c. being convicted by the Oath of one Witness

before one Justice, &c. Mayor, &c. where the Offence was committed, to be levied by Distress and Sale, &c.

Coals shall be sold by the Chaldron containing 36 such Bushels heaped.

Now follow the Names of the principal Towns in every Shire (or County), appointed to have the Keeping of Standards for the Weights and Measures, according to these Statutes.

§. 27. B edfordshire, Town of Bedford.	London, the same City.
Berksh. the Town of Reading.	Middlesex, the City of Westminster.
Bristol, the same Town.	Norfolk, the City of Norwich.
Buck. the Town of Buckingham.	North. the Town of Northampton.
Camb. the University of Cambridge.	Northumb. the Town of Newcastle.
Cheshire, the City of Chester.	Notting. the Town of Nottingham.
Cornwall, the Town of Lustythiel.	Oxford, the University of Oxford.
Cumberland, the City of Carlisle.	Rutland, the Town of Upinham.
Derb. the Town of Derby.	Shropsh. the Town of Shrewsbury.
Devon. the City of Exeter.	Cinque-Ports, the Castle of Dover.
Dorset. the Town Dorchester.	Staff. the Town of Stafford.
Essex, The Town of Chelmsford.	Somerset. the Town of Ilchester.
Glouc. the Town of Gloucester.	Southampton, the same Town.
Hampsh. the City of Winchester.	Suff. Saint Edmunds-bury.
Hertf. the Town of Hertford.	Surry, the Town of Guilford.
Heref. the Town of Hereford.	Sussex, the Town of Lewes.
Hunt. the Town of Huntingdon.	Warw. the Town of Coventry.
Kent, the Town of Maidstone.	Westmorl. the Town of Appulbie.
Lanc. the Town of Lancaster.	Wiltsh. the City of Salisbury.
Leic. the Town of Leicester.	Worc. the City of Worcester.
Linc. the City of Lincoln.	Yorksh. the City of York.

Stat. 11. H. 7.

Levit. 19. 35, 36.

Ye shall not do unjustly in Judgment, in Line, in Weight or in Measure: Ye shall have just Balances and true Weights.

Prov. 11. 1. & 20. 20.

False Balances or divers Measures are all an Abomination unto the Lord.

Deut. 25. 13. &c.

Thou shalt not have two Manner of Weights, a great and a small; nor divers Measures; but a right, just and perfect Weight and Measure, that thy Days may be lengthened in the Land, &c.

C H A P.

C H A P. CXIII.

Wool.

‘ NO Person shall press together with Screws, Presses, or other Engines, into any Sack, Bag, Pack, or other Wrapper; or put, ^{§. 2. Pursuing in order to Transporting} press, pack or strain, any Wool or Yarn made of Wool into any Cask or Vessel, or shall lay or carry, or cause, &c. at or near the Shore or Coasts of the Sea or navigable River, any Wool, Wool-flocks, or Yarn made of Wool; with an Intent to convey the same out of *England* or *Ireland* into *Scotland* or any foreign Parts, upon Pain to lose the same or the Value thereof. 14 Car. 2. cap. 18.

‘ No Bags, Sacks, Packs or Cask of Wool, Wool-fells, Mortlings, ^{§. 3. Times of Carriage.} Sherlings, Yarn made of Wool, Wool-flocks, Fullers-earth, Fulling-clay or Tobacco-pipe Clay, shall be carried or conveyed to or from any Place or Places in *England*, but from the first of *March* to the 24th of *September*, between four of the Clock in the Morning and eight of the Clock in the Evening, and from the 29th of *Sept.* to the first Day of *March*, between seven of the Clock in the Morning and five of the Clock in the Evening, upon Penalty of Forfeiture thereof.

‘ The Moiety of all Forfeitures by this Act to the King, the other ^{§. 4. Forfeitures.} to the Prosecutor.

‘ Justices of Peace in their Quarter-Sessions may hear and determine Offences against this Act. 14 Car. 2. c. 18.

‘ The Exporting, Transporting, Carrying or Conveying of any the Goods, Wares or Commodities mentioned in that Act is declared a common Nuisance. 14 Car. 2. c. 18.

12 Car. 2.
cap. 2.

Exporting *Sheep* or *Wool* of the Breed or Growth of *England* or *Ireland*, or any *Woolfells*, *Mortlings* or *Sherlings*, or any *Yarn* made of *Wool*, or any *Wool-flocks*, or *Fullers-earth* or *Fulling-clay*, or loading the same on any Horse, Cart or Carriage, or on board any Ship or Vessel, with an Intention to export it, shall forfeit the same, and also 20 s. for every Sheep, and 3 s. for every Pound of *Wool*, &c. and the Owners of the Ship or Vessel shall forfeit their Interests therein, with all the Apparel and Furniture; and the Master of the Ship knowing the said Offence, shall forfeit all his Goods and Chattels and be committed for three Months; the said Forfeitures to be divided between the King and the Prosecutor, and to be recovered in any Court of Record, by Action of Debt, Bill, Plaint or Information, or before Justices of Assize, or at the General Quarter-Sessions of the Peace.

The Merchant transporting any such Goods, shall be disabled to require any Debt or Account of his Factor, or others.

Offenders shall be tried in the County where the Goods are loaded, or where they are apprehended; the Prosecution must be within a Year after the Offence.

Tobacco-pipe Clay not to be exported, on Pain of forfeiting 3 s. for ^{Tobacco-pipe Clay.} every Pound.

All *Wool*, &c. * *Tobacco-pipe Clay*, shall be carried in the Day-^{* Exporter of Fullers-earth or scouring Clay, forfeits 1 s. for every Pound. 9 & 10 Will. 3. cap. 40.} time at seasonable Hours; (*viz.*) from the first Day of *March* to the 29th

29th Day of *September*, between four of the Clock in the Morning and eight in the Evening, and from the 29th of *September* to the first of *March* between seven in the Morning and five in the Evening, on Pain of forfeiting the Goods, or the Value thereof; one Moiety to the Crown, the other to him who will sue, &c. by Action of Debt, &c.

By this Act
any Person
employed
in working
Wool, Li-
men, Fus-
tian, Cot-
ton or Iron,

Wool shall not be transported from *Ireland* to any Place but to *England* or *Wales*, on Pain to forfeit the same, and 500 l. for every Offence, and the Vessel with all her Tackle shall be forfeited: And the Master, Mariners, Porters, Carriers, Waggoners, Boatmen, and other Persons knowing the Offence and assisting therein, shall forfeit 40 l. a Moiety to the Informer. See the Statute.

and entrusted therewithal, and embezzling or purloining the same, forfeits double the Value of the Damages to the Use of the Poor: Conviction is to be by the Oath of one Witness, before one Justice, or the Confession of the Party; and if the Forfeiture is not paid, the Justice may send him to the House of Correction; and if not able to pay it, then he shall be whipp'd and kept to hard Labour not exceeding fourteen Days.

11 & 11
Will. 3.
cap. 10.

Any Person may seize Wool designed to be exported, and also the Vessel, &c.

Every Offender against this or any other Act, prohibiting the Exportation of Wool, may be prosecuted in any of the Courts at *Westminster*, and thereupon a *Capias* shall issue, the first Process specifying the Sum or the Penalty for which the Suit is brought, and the Defendant shall give bail to appear at the Return of the Writ, &c.

Any Person being in Gaol for the unlawful Exportation of Wool, and refusing to appear and plead to a Declaration or Information to be delivered to the Gaoler for one whole Term; in such Case Judgment shall be had against him by Default, and where such Judgment is had, or a Verdict be against him, if he doth not pay the Condemnation-Money within three Months after the Entering the Judgment, the Court shall cause him to be transported for seven Years, and if he return before that Time is expired, he shall suffer as a Felon, without Benefit of Clergy.

4 Geo.
cap. 11.

C H A P. CXIV.

Words, News.

- §. 1. ' JUSTICES of Peace may by Virtue of their Commission take Cogni-
' zance, and punish evil Words, for they tend to the Breach of the
' Peace, especially if spoken against any publick Person or Officer:
' And therefore if one say of a Mayor in the Execution of his Office,
' that he is a Fool, an Indictment lies: But to say of a Mayor play-
' ing at Dice, that he is a Fool, no Indictment lies. *Bag's Case. Mich.*
12 *Jac. Roll's Rep. part 2. p. 79.*

Here

Here also will I give a short View of such particular and private *Statutes*, (made only for some particular Shires, Cities or Towns) as do give some Power also unto two (or more) Justices of Peace out of their Sessions.

C H A P. CXV. *Vide LXVI.*

- F**OR paving of *Aldgate-street*. 13 *Eliz.* 23. and 23 *Eliz.* 12. §. 1.
Aldgate.
 For the Repairing of *Cardiff-Bridge*. 23 *Eliz.* 11. *Cardiff.*
 For Justices of Peace in *Cheshire, &c.* 27 *H.* 8. 5. *Cheshire.*
 For Repairing of *Chepstow-Bridge*. 3 *Jac.* 23. *Chepstow.*
 For *Chichester* Haven. 27 *El.* 22. *Chichester.*
 For Paving *Drury-lane* near *London*. 3 *Jac.* 22. *London.*
 See more here before, *titulo London.*
 For Repairing the Highway at *Nonsuch*. 3 *Jac.* 19. *Nonsuch.*
 For Recovery of Marsh-ground in *Norf. and Suff.* 7 *Jac.* 20. *Norfolk.*
 For making Coverlets and Dornicks there. 5 *Ed.* 6. 24. *Suffolk.*
 For Recognizances to be taken of Lessees in *Northumberland*. *Northumberland.*
 11 *H.* 7. 9.
 For amending Bridges within five Miles thereof. 18 *El.* 20.
 For making the River of *Thames* navigable to *Oxford, &c.* 21 *Jac.* 32. *Oxford.*
 For Repairing a Ferry in the Isle of *Shepey*. See 18 *El.* 10. and *Shepey*.
 27 *El.* 26.
 For laying out new Highways in *Sussex* and *Kent*. 14 *H.* 8. 6. *Sussex.*
 26 *H.* 8. 7. *Kent.*
 See before *Tit. Purveyors.*
 For Repair of *Upton-Bridge*. 3 *Jac.* 24. *Upton.*
 For Wages of the Knights of Parliament in *Wales*. 35 *H.* 8. 11. *Wales.*
 For establishing Justices of Peace in *Wales*. 34 *H.* 8.
 For making of the Bridge at *Wilton* over *Wye*; in the County of *Wilton*.
Hereford. 39 *Eliz.* 24.

Thus much concerning such Statutes as the Justices of the Peace, out of their Sessions of the Peace, are to meddle withal.

Now for a Conclusion of these Statutes; and of the Services of the Justices of Peace therein, I wish them, that in all Cases where the whole Matter is (by the Statute) committed to one alone, or to two Justices, or more, out of their Sessions, to hear and determine, &c. as where upon his or their own View, or by Confession of the Offender, or upon Examination and Proof of Witnesses; (and without any Indictment found or preferred) they may commit or punish an Offender as convict by such his Confession or Examination and Proof; as also where they may proceed by Inquiry and Indictment; that in every such Case of their judicial Proceeding they be led by no Affection, but advisedly to examine and consider as well the Fact it self as the Circumstances, and then (in the Fear of God, and according to Law) to proceed and to see or cause due Execution of the Punishment to be done upon the Offenders, according to the Quality and Quantity of their Offence, and as the Statutes themselves direct; for Law without due Execution and Punishment of the Offenders, is as a sheathed Sword, without any Use or Profit.

But

§. 2.
Record.

But in all Cases where the Justices of Peace have Power to *hear and determine* out of their Sessions (*sc.* upon their own View, or upon the Confession of the Offender or upon Proof of Witnesses) if upon such Conviction, the Offender is to be committed to Gaol, the Justices ought to make a Record in Writing under their Hands of all the Matter, and of the Proofs, &c. which Record notwithstanding in many Cases they may keep by them, &c.

Also if upon such Conviction the Offender is to be *fined* to the King, then the Justices of Peace are to *estreat such Fine*, and to deliver or send the *Bistreat* into the Exchequer, whereby the Barons of the Exchequer may cause the said Fine (or Forfeiture) to be levied to the King's Use.

And here I will shortly point out some particular Offences which by the Statutes are referred to the Justices of Peace to hear and determine (*out of their Sessions*) as aforesaid, and will leave the rest to your own Search.

§. 3.
Where the
Justice
may hear
and deter-
mine out of
Sessions.

1. Some Particulars where one Justice of Peace upon his own View or Hearing of the Offence may punish the Offenders.

Alehouse-keepers, &c. suffering Townsmen or any other Person to continue Drinking in their Houses contrary to the Statute 1 Jac. c. 9. and 21 Jac. 7. *Vide antea Tit. Alehouses.*

Townsmen or Strangers tippling in Alehouses, &c. contrary to the Statute 4 Jac. cap. 5. and 21 Jac. c. 7. *ibid.*

Persons that shall ride or go armed, contrary to the Statute 2 E. 3. c. 5. *Vide antea Tit. Armour.*

Persons that shall have any Tenters, &c. for the deceitful Stretching of Cloth. *Vide antea Tit. Cloth.*

Offenders in Forcible Entries or Detainers contrary to the Statute. See *antea Tit. Forcible Entry.*

Keepers of Places for unlawful Gaming. *Antea Tit. Games unlawful.*

Players in such Places. *Ibid.*

Players at unlawful Games, wheresoever, contrary to the Statutes. See as before.

Swearing prophanely or Cursing in the Hearing of any Justice of Peace, &c. *Antea Tit. Swearing.*

And con-
vict upon
their own
Confession.

2. Where one Justice of Peace may punish Offenders as convict upon their own Confession.

Alehouse-keepers, Inn-keepers or Victuallers, suffering Townsmen or Strangers to continue or be Tippling in their Houses, &c. See *antea Tit. Alehouses.*

Townsmen or Strangers continuing Tippling in any Inn, Alehouse or Victualling-house. *Vide ibid.*

Sheriffs, &c. entring Complaints in their Courts unduly. *Vide antea Tit. Sheriffs.*

Persons not repairing every Sunday to Church. *Vide antea Tit. Recusants.*

Prophane Swearers or Cursers. *Hic antea Tit. Swearing.*

Trespassers in Corn, Orchards or Woods, &c. contrary to the Statute 43 El. 7. *Vide antea Tit. Trespass.*

Offences in Tile-making contrary to the Statute. *Vide antea Tit. Tile.*

Offences in Watermen contrary to the Statute. *Vide antea Tit. Watermen.*

Upon Exa-
mination
and Oath of
Witnesses.

3. Where one Justice of Peace may punish Offenders as convict upon Examination and Oath of Witnesses.

Alehouse-

Alehouse-keepers, &c. suffering Townsmen or Strangers to be Tippling in their Houses contrary to the Statute 1 Jac. and 21 Jac. *Vide antea Tit. Alehouses.*

Alehouse-keepers, &c. selling less Beer or Ale than according to the Statute 1 Jac. *ibid.*

Townsmen or Strangers tippling in Alehouses, &c. contrary to the Statute 4 Jac. c. 5. *ibid.*

Persons not repairing every Sunday to Church, they may be convicted upon the Oath of one Witness. *Vide antea Tit. Recusants.*

Prophane Swearers or Cursers. *Hic antea Tit. Swearing.*

Transporters of Corn, &c. *Vide antea Tit. Transportation.*

Trespassers of Corn, Orchards or Woods, &c. they also may be convicted upon the Oath of one Witness. *Vide antea Tit. Trespass.*

And yet here, and in all Cases of Conviction upon the Oath of Witnesses, the Offender himself must also be heard to speak, and be examined by the Justice of Peace, &c. or else it is no lawful Conviction. See *hic*, cap. 6, & 7. & *hic infra*.

4. Where one Justice of Peace may punish Offenders as convicted upon Examination generally, the Statutes not shewing what Persons shall be examined; in which Cases the Justice of Peace may thereupon examine as well the Offenders themselves as other Witnesses. *Upon Examination generally.*

The Defaults of the Collectors of the Sheriffs Amerciaments; as also of Bailiffs of Hundreds. *Vide antea Tit. Sheriffs.*

Offences in Tile-making. *Vide antea Tit. Tile.*

Offences in Watermen. *Vide antea Tit. Watermen.*

5. Where one Justice of Peace may punish Offenders upon Accusation or Proof, generally; which Accusation or Proof must be by Examination of Witnesses only, and yet the Party delinquent is (here also) to be first heard, before he be convicted or condemned; *ut supra*. *Upon Accusation or Proof.*

Offenders in keeping or using *Guns or Cross-bows*, &c. contrary to the Statute. *Vide antea Tit. Guns.*

Disturbers of *Preachers.* *Vide antea Tit. Preachers.*

Soldiers that purloined their *Horse or Harness.* *Vide antea Tit. Soldiers.*

Note, That in these former Cases, and in all other Cases where the Justice of Peace is to take such Examination of Witnesses, or such other Accusation or Proof aforesaid, though the Statute doth not expressly set down that it shall be upon Oath, yet 'tis fit that the Justice doth it upon Oath; for Mr. Brook (sometime Chief Justice of the Common Pleas) was of Opinion, that every Examination ought to be upon Oath; and Mr. Lamb. 517. was also of Opinion, that these Examinations taken by the Justices of Peace ought always to be upon Oath, the rather, because the Trial in these Cases dependeth wholly upon these Examinations; yea, in all other Cases wheresoever any Man is authorized to examine Witnesses, such Authority to examine shall be taken and construed to be in such Manner as the Law will, which is only by Oath. *Vide postea Tit. Examination.* *Upon Oath.*

Also where the Matter is to be tried by Witnesses only, it is fit there be two Witnesses at the least (except where the Statute doth expressly allow the Oath and Testimony of one Witness). And so was the Opinion of Mr. Brook, that in such Case there ought to be two Witnesses at the least; and agreeable thereto also is the Word of God, *Matth. 18. 16. 2 Cor. 13. Ps. 12. a.* Otherwise it is where the Trial

is by a *Jury of twelve Men*, there one Witness sufficeth, yea, there many Times Witnesses are not necessary. See 1 *Plow.* 12. a.

§. 4.
Where two Justices may hear and determine out of Sessions.

Where two Justices of Peace (out of their Sessions for the Peace) may punish Offenders as convict before them, upon the Confession of the Offender, or upon Examination of Witnesses, or upon their own View. Clothiers refusing to pay the Wages assessed, &c. See *antea Tit. Cloth. Spinsters, &c.* which shall imbezil any Part of their Wool, contrary to the Statute 7 *Jac.* 7. (upon Proof of one Witness).

Clothiers making deceivable Woollen-cloth. 21 *Jac.* cap. 18. *Hic antea Tit. Cloth.*

Servants or Labourers assaulting their Master. See *antea Tit. Labourers*, pag. 12.

Servants departing, refusing to serve, or take excessive Wages, &c. See *Tit. Labourers*, p. 6. 14.

Persons restrained from Malting, &c. See *antea Tit. Malt.*

Destroyers of Partridges or other Fowl, or of their Eggs, or of Hares, or keeping hunting Dogs, contrary to the Statute 1 *Jac.* 27. See *antea Tit. Partridge.*

Destroyers of Pheasants or Partridges, contrary to the Stat. 7 *Jac.* 11. upon Proof of one Witness. *Ibid.*

Such as shall put out of their Parish (as poor Persons) those that be not to be put out. *Vide antea Tit. Poor.*

Also the Defaults of the Overseers of the Poor. *Ibid.*

Disturbers of Preachers. *Vide antea Tit. Preachers.*

Offenders which shall disturb the Execution of the Statute for Rogues; and Officers which shall be remiss or negligent therein, &c. *Vide antea Tit. Rogues.*

The Defaults of Officers and others touching Weights and Measures. *Vide antea Tit. Weights.*

But note, that this Manner of Trial by Examination of the Offenders or Witnesses is not permitted to Justices of Peace, but only in Cases where either the Statutes do generally refer the Trial to their Discretions, or else do specially authorise them to take the Examinations.

And in all these former Cases where the Justices may hear and determine, or may punish Offenders as convict upon their own Confession or upon Examination of Witnesses, the Justices may grant out their Warrants against such Offenders (or at least ought to send for them) to appear before them to answer their said Offences: And thereupon may proceed to examine, hear and determine the Offences.

§. 5.
By Indictment out of Sessions.

Where one or two Justices of Peace may hear and determine, by Inquiry and Indictment taken before them, out of their general Sessions, as it seemeth, viz.

Defaults of Sheriffs and Bailiffs, in not returning sufficient Jurors to inquire of Forcible Entries. *Vide antea Tit. Forcible Entry.*

Offenders in Riots. *Vide antea Tit. Riots.*

Transporters of Corn, &c. *Vide antea Tit. Transportation.*

Offences committed in Tile-making. *Vide antea Tit. Tile.*

Defaults as well of Officers as of Buyers and Sellers with unlawful Weights or Measures. *Vide antea Tit. Weights, &c.*

And in these Cases the Offence being found upon such Inquiry, these Justices have Authority not only to make out Process against the Offenders under their own Teste, but also to fine them, and to commit the Offenders to Prison till they have paid their Fine, and to deliver them upon

See Lam.
317, and
496.

upon Payment of the same or upon Sureties given for it: Or otherwise the Justices may receive the Traverse of the Offenders, &c. for to all these Effects, the Words (in those Statutes) Hear and Determine, do seem to lead and inable the said Justices.

Also in these Cases, the Justices Precept to the Sheriff, to return a Jury before them, may be in this and the like Form: And either in the King's Name, or under the Name of the Justices, &c.

Vide hic
cap. 130.

Jacobus, Dei grat. Rex Anglia, &c. Vicecom' Cantabr. salutem. Precipimus tibi quod non omittas propter libert' aliquam Comit' tui, quin venire fac' coram Justic' nostris de pace in Comitatu' prad' conservand. assign' apud Linton in Co. prad. die Julii proxim' sequent' 24 probos & legales homines de Hundred' de Radfield & Chilford, ad audiend' & faciend' ea quae eis ex parte nostra ibidem tunc fuerit injungend'. Et habeas tunc & ibidem hoc mandatum. Teste Mi. D. (apud West-wrattin) tali die, &c.

CHAP. CXVI. Vide LXVII.

Sureties for the Peace.

Lamb. 77. **S**urety for the Peace, is the Acknowledging a Recognisance (or Bond) ^{What it is.} to the King, taken by a competent Judge of Record, for the Keeping the Peace: And it is called Surety, of the Word *Securitas*, because the Party that was in Fear, is thereby the more secure and safe.

F. N. B.
79. h.
Lamb. 77.

This Surety for the Peace every Justice may take and command by ^{§. 2.} a two-fold Authority. ^{Two ways} ^{Supplicavit.}

1. First, As a *Minister* (commanded thereto by a higher Authority) as when a Writ of *Supplicavit*, directed out of the Chancery or King's Bench, is delivered to him: Upon this Writ, that Justice of Peace only (to whom such Writ is delivered) is to direct his Warrant, to cause the Party to be brought before him *alone* to find Sureties for the Peace. And therein the said Justice is to do according as the Writ doth direct him.

See more concerning this Writ of *Supplicavit*, &c. *postea, sub hoc Tit. Surety for the Peace.*

2. Secondly, As a *Judge*, and by Virtue of his Office, derived from his Commission, he may command this Surety of the Peace to be found; and that either of his own *Motion and Discretion*, or else at the *Request of another*.

The Justice of Peace, upon his own *Motion and Discretion*, may ^{§. 3.} (if he see Cause) command Surety of the Peace to be found, or may ^{Upon Discretion.} bind a Man to the Peace, and that against *all the King's Subjects*, if the Justice shall so think meet, in these Cases following:

5 H. 7. 6.

1. One that maketh an *Affault or Affray upon the Justice of Peace* ^{For what} *himself*, the Justice may cause him to be arrested and carried presently before another Justice of Peace, who may commit him to Prison ^{As done in his Presence.} till he hath found Sureties for the Peace. *Vide hic.*

P. R. 18,
19.

2. Such as *in his Presence shall make an Affray upon another*, or shall strike or assault, or offer to strike another, the Justice may commit him to Prison until he hath found Sureties for the Peace. *Vide antea Tit. Affray & Br. faux imprison* 12.

3. So of such as in his Presence and Hearing shall threaten to kill, beat or hurt another, or to burn his House.

4. So of such as in his Presence shall contend only in hot Words; J. R. 18. for from thence oftentimes do ensue Affrays and Batteries, and sometimes Maims, yea, Manslaughters and Murders.

5. So of such as in his Presence shall go or ride armed offensively, See Crom. or with an unusual Manner of Servants or Attendants: For these are 76. 142. accounted to be an Affray and Fear of the People, and a Means of P. R. 4. the Breach of the Peace: So of Servants and Labourers that shall bear any Weapons contrary to the Statute of 12 R. 2. Vide antea Tit. Armour.

6. Also he may bind to the Peace any other Person, suspected to be 9 Ed. 4. 3. inclined to the Breach of the Peace. P. R. 4.

Out of his Presence. 7. If (out of the Presence of the Justice of Peace) any Man shall Crom. threaten to kill, maim, or beat another, or do attempt or go about to 135 and 143. do it: Then any Constable, being present, may arrest such Offender, P. R. 22. to come before a Justice of Peace, to find Sureties for the Peace, and Fa. Bar. 201. the Justice may bind him to the Peace.

8. If any Constable shall perceive any other Persons in his Presence to be about to break the Peace, either by drawing Weapons, or by Striking or Assaulting one another, or by Assaulting the Constable himself; he may take Assistance, and carry them all before the Justice, 1 H. 7. 7. to find Sureties for the Peace, and the Justice may bind them.

9. If the Constable shall know that certain Persons be fighting or P. R. 22. quarrelling in a House, he may break open the Doors, and arrest them; and carry them before a Justice of Peace, to find Surety of the Peace: And the Justice may bind them.

10. Yea, the Justice of Peace (either upon his own Discretion, or See Br. upon any Man's Complaint) may make his Warrant for any such as Peace 21. have made an Affray (though out of his Presence) and may bind them 21 Aff 27. to the Peace. Vide antea Tit. Affray.

11. If one hath received a Wound, the Justice of Peace may take Surety of the Peace of the one and the other, (by his Discretion) until the Wound be cured and the Malice be over. Popham, late Lord Ch. Justice of England (an honourable and grave Judge) did accordingly between James and Benton, at Cambridge Assizes. 3 Jac.

12. All such as shall go or ride armed (offensively) in Fairs, Markets or elsewhere; or shall wear or carry any Guns, Dags or Pistols charged; any Constable; seeing this, may arrest them, and carry them before the Justice of Peace, and he may bind them to the Peace; yea, tho' those 2 E. 3. c. 3. Persons were so armed or weaponed for their Defence upon any private Quarrel, &c. for they might have had the Peace against the other Persons: And besides, it striketh a Fear and Terror into the King's Subjects. Commis- sion.

See more hic antea Tit. Affray and Armour.

13. Also the Justice of Peace (upon his Discretion) may bind to the Peace a common Barrator. Vide Tit. Barrator.

14. So of Rioters. Vide Tit. Rioters, and Lamb. 79.

9. 4. New Sure- ties. 15. He that standeth bound to keep the Peace, if he hath broken (or forfeited) his Recognizance by Breach of the Peace, the Justice may 21 E. 4. 40. and ought to bind him anew, and by better Sureties, for the Safety of the Person in Danger; but that must not be done, until the Party be convicted of the Breach of the Peace upon his Recognizance; for before his Conviction it resteth indifferent whether the Recognizance Br. Peac be 17.

Lamb. 117. Crom. 142. be forfeited or no: But after that he is thereof convicted, and that the Forfeiture be levied, the Recognizance is then utterly determined; and then he is to be compelled to find new Surety, or else to be sent to the Gaol.

So, tho' the Forfeiture be not levied, yet if the Party be convicted for Breaking the Peace, he shall be bound of new. *Cromp.* 141. and *Br. Recog.* 21.

16. Also he that standeth bound to keep the Peace, if his Sureties be insufficient, the same Justice, or another Justice of Peace, may compel him to find better Sureties.

And in many of the former Cases the Justice of Peace ought of Duty (or at least in good Discretion) to command this Surety for the Peace, altho' the same be not required by any other Person: And if any such Person shall refuse to give such Surety, the Justice ought to send him to Prison, there to remain until he shall find such Surety.

9 Ed. 4. 3. Br. Peace 8. If a Justice of Peace (upon his own Discretion) shall cause one to be arrested to find Sureties for the Peace, and shall after let him go without taking Surety, or binding him to the Peace, yet the Party hath no Remedy; for an Action will not lie against the Justice for this, he being a *Judge of Record*. See 9 H. 6. f. 60. and 9 E. 4. f. 3. *Br. Judges* 2. 10. and *Br. Faux Imp.* 12.

Lamb. 80. P. R. 18. A Justice of Peace may persuade a Man to require the Surety of Peace against another, and he himself may grant a Warrant for it, because it is no more than he might have granted of his own Authority, without any Demand made; and it shall be presumed that he saw Cause to do all this.

Also at the Request or Prayer of another, the Justice of Peace may command this Surety of the Peace, and may grant his Warrant for it. *Upon Request.*

F. N. B. 79. H. Lamb. 84. 85. But here the Justice must and ought first to take an Oath of the Party that demandeth the Peace, which Oath must be to this Purpose, sc. *That he standeth in Fear of his Life, or of some bodily Hurt to be done to himself, or to have his Houses burned (and that he doth not crave the Peace for any private Malice, or for Vexation, but of very Fear, and for the needful Safety of his Body or Houses) for the Words of the Commission herein are, Et ad omnes illos qui alicui, vel aliquibus de populo nostro; de corporibus suis, vel de incendia domorum suarum, minas fecerint, ad sufficientem securitatem de pace, &c. inveniendam, &c.* *§. 5. Oath, the Form of it.*

So he that shall be threatned to be hurt in his Body, (scil. to be beaten, wounded, maimed or killed) the Party so threatned may crave and have Surety of the Peace against the other, and it is to be granted properly in such Cases.

Also if a Man do fear that another will kill, maim, beat, assault, or hurt him in the Body, he may crave the Peace against such other Person.

Fitz. 79. G. H. So if a Man do fear that another will burn his House, or that he will procure or cause any such Hurt to be done him by another, either in his Body or in his Houses; for the Words of the Recognizance be, *Non faciet, non fieri procurabit.*

Cromp. 135. a. So if a Man lieth in wait to beat, kill or hurt another, it is good Cause to require the Surety. *Cromp.* 135.

Une nota les parols deut in le Commission, Minas fecerit, &c. per queux parols, sc. que per le Commission, le peace nemy est destre grant sur aucun request, ne aut remet. Si non tantum lou home est menace, & pur ceo lou A. craved le peace ver. B. pur ceo que B. usa de oier ooe un Pistol, & le Just. de P. sur ceo granted le Peace. Sir Nick. Hyde blamed le Justice, disant que il ne devoit aver lye B. a le Peace, pur ceo q; il n'ad menace A.

Threat-
sing.

If a Man be threatned to have his *Goods burned*, by the Opinion of *Lamb. 84.* Mr. *Fitz.* he may demand Surety of the Peace for this: *Quere tamen*, because he may recover Damages for and to the Value of the same. *Co. L. 255.*

And where a Man shall threaten to *imprison another*, it is holden, *17 E. 4. 4.* That the Peace shall not be granted; for that the Party wronged *Br. Peace 22.* may have his Action of False Imprisonment, or a Writ *De homine replegiand*, and so shall recover Damages for his Imprisonment.

Yet enquire hereof, for to threaten Imprisonment is within the Words *Lamb. 89.* *minas de corporibus*; and like harm may happen to a Man by hard Imprisonment, as by cruel Beating of him: And to threaten Imprisonment, is a Cause to avoid a Deed or Bond, as well as to threaten to kill or maim one, *Ec. 39 H. 6. Br. Duress. 9. Vide Co. L. 253.*

F. N. B.
80. G.
Lamb. 89.

Where a Man is in fear that another will *hurt his Servants or his Cattle or other Goods*; this Surety of the Peace shall not be granted by the Justice: But in this Case Mr. *Fitz.* saith, the Party may have a special Writ out of the *Chancery*, directed to the Sheriff, that he shall cause such Person to find Surety, that he shall do no Hurt or Damage to the other Man in his Body, or to his Servants or Goods. And if he will not find Surety, that then he shall arrest and detain him in Prison until he shall find Surety: And that the Sheriff shall certify all that he shall do thereupon into the *Chancery*, &c. And the Sheriff ought to take such Surety by Recognizance. And yet if a Man shall *threaten to hurt my Servant, or my Wife or Child*, I see no Cause but that in their Behalf I may crave the Peace, by the Words of the Commission, and that the Justice ought to grant it.

If a Man will require the Peace, because he is *at Variance*, or in Suit with his Neighbour, it shall not granted.

Note also, the Surety for the Peace shall not be granted but where *Br. F. imp. 41.* there is a Fear of some *present or future Danger*, and not meerly for *L. R. 14.* a *Battery* or *Trespas* that is *past*, or for any Breach of the Peace that is *past*: For this Surety of the Peace is only for the Security of such as are in fear. Now *Metus est presentis vel futuri periculi causa, mentis trepidatio*: And so this Surety is, *providere presentia & futura, & non praterita.*

And, as for a *Battery* or other like *Trespas* that is *past*, the Party wronged may have his Action of *Trespas* or *Battery*, &c. or may punish the Offender by *Indictment* at the King's Suit: And yet in such Case the Justice may (if he see Cause) bind over the Affrayer. *Vide antea, & Ex. 21. 19.*

§. 6.
Deny.

If the Justice of Peace shall perceive that this Surety for the Peace is demanded meerly of *Malice* or for *Vexation only*, without any just Cause of Fear, he may safely deny it. As in common Experience we find it, That where *A.* shall upon just Cause come and crave the Peace against *B.* and hath it granted to him; when *B.* shall come before the Justice, *B.* likewise will crave the Peace against *A.* (and will perhaps surmise some Cause) but yet will nevertheless be content to surcease his Suit and Demand against *A.* so as *A.* will relinquish to have the Peace against him; here the Justice of Peace shall do well (as I think) not to be too forward in granting the Peace thus required by *B.* but to perswade him, and to shew him the Danger of his Oath which he is to take; but yet if *B.* will not be perswaded, but will take his Oath, that he is in Fear (where indeed he neither doth fear, nor hath Cause to fear) this Oath shall discharge the Justice, and the Fault shall remain upon such Complainant. And

And when the Justice hath granted the Peace to one, who in his Judgment shall crave or require it only out of Malice or for Vexation, he may presently in good Discretion bind him to the good Behaviour that so required the Peace.

C H A P. CXVII. *Vide* LXVIII.

For whom, and against whom this Surety for the Peace shall be granted.

THE Law hath such an Opinion of the Peaceable Disposition of *Noblemen*, that 'tis sufficient to take one of their Promises, ^{s. i.} upon his Honour, that he would not break the Peace against a Man, *Br. Contempts* 6. 24 *E.* 3. 3. and 17 *E.* 4. 4.

^{Fitz. Subp. 20.} And therefore if a Man shall have Cause to have the Surety of the Peace against a *Lord of the Parliament*, or such great and noble Personage, he shall not have a Warrant from the Justices of Peace to that Purpose; nor yet have a *Supplicavit* out of the *Chancery* directed to the Justice of Peace: But if there be Cause, he may have a *Subpœna* out of the *Chancery*, (of common Right) and there such *Lord or Nobleman* shall be bound to the Peace. And yet if such Lord will not appear upon the *Subpœna* served, *Qwere*, if an Attachment will lie against him upon such his Default, *M. Cromp. f. 134. b.* saith that it was holden in the Case of the Lord *Cromwell*, in the *Chancery*, about 18 *R.* That an Attachment will not lie, and *Dyer* 315. seemeth to accord.

^{Co. 65, 53, 54, 11 H. 4. 14 Br. Rep. 19. Co. 9. 49.} But though it be true that the Person of a *Baron* (who is a Peer of the Parliament) shall not be arrested in Cases of Debt or Trespass, &c.) first, in respect of their Dignity; secondly, in Respect that the Law presumeth that they have sufficient Lands and Tenements whereby they may be distrained; yet in Cases of *Contempt*, they may be arrested by *Capias*, or *Attachment*, &c. *Vide* 27 *H.* 8. f. 22. b.

^{Fitz. Subp. 20. F. N. B. 79. g. Crom. 134.} Or else the Party may crave the Peace in the *Chancery* against such Lord or Peer (&c. to have a *Supplicavit* directed to the Sheriff) who may and ought to execute the same: And if the Sheriff shall not do his Office therein, an *Alias Plur.* and Attachment lieth against him. And if the Sheriff shall return, that such Lord is so powerful that he cannot arrest him; upon such Return, the Sheriff shall be grievously amerced (for he might have taken the *Posse comitatus*, scil. he might have levied 300 Men by his Discretion, if there had been need, to have aided him. And if such Lord or Peer, who is by the Sheriff so arrested, shall refuse to obey the Arrest, and shall make a *Rescous*, whereupon the Sheriff shall return a *Rescous*, there shall be an Attachment granted out against such Lord, to arrest and take his Body for such his Contempt.

^{Co. 6. 52, 53. 20 H. 6. c. 9. Stamp. 152, 153.} The same Law and Remedy is where a Man hath Cause to have the Surety of the Peace against a *Duchess, Countess or Baroness*; for ^{Nobles} they are Peers of the Realm, and shall be tried by their Peers, tho' in Respect of their Sex they cannot sit in Parliament: And they are ^{men} in

in the same Degree (as concerning their Nobility and the Privileges incident to their Dignities) with Dukes, Earls, and Barons. But here Note this Diversity, *sc.* if such Woman, being a Countess or Baroness, *sc.* by Marriage only, shall marry again under the Degree of Nobility, she hath thereby lost her Name of Dignity (together with the Privileges of her said Nobility also, for in such a Case, *Si mulier nobilis nupserit ignobili, desinit esse nobilis*, and that which was gotten by Marriage may also be lost by Marriage; for *Eodem modo quo quid constituitur, dissolvitur*; but if she be Noble by Birth or Co. *ibid.* Descent, whomsoever she shall marry, yet she remaineth Noble: For Birth-Right *est Character indelebilis. Vide Dyer 79. & Br. Nofme de Dignity 31. & 69. & C. l. 168.*

And yet by the Curtesy of England, if Women have good Estates they never loose by marrying more meanly, but do still take Place according to the Estate of their first Husband.

§. 3. Knight. Surety of the Peace may be granted by the Justice against a Knight, and all other Lay Persons being under the Degree of a Baron or Peer of the Realm, and they shall be bound with Sureties.

* A Justice of Peace of Surry. Sir Nicholas Stoughton in Surry, was, upon the Complaint of one Gilham, required in Sessions to give Sureties for the good Behaviour for a sufficient Cause; he refused; the Sessions committed him until, &c. he gave Sureties: And afterwards Complaint was made hereof in the King's Bench, and he was compelled there to give Sureties, notwithstanding it was objected that the Justices of Peace were all of equal Power: But it was answered by the Court, that the Sessions made a Court, which Court might require Sureties for the Peace or good Behaviour of any one Justice of Peace.

Persons. Ecclesiastical Persons (if they be not attending upon Divine Services) may be arrested for the Peace, and they shall be bound with Sureties; But whilst they are doing any Divine Service in the Church, Church-yard, or other Place dedicated to God, they may not be arrested. 50 Ed. 3. 5 P. Arrests 1. See Stat. 1 R. 2. cap. 15. & 1 Mar. c. 3. 36 H. 6. Br. Moign. 14 & 15.

§. 4. Sheriff. Surety of the Peace may be granted against the Sheriff, Under-Sheriff, Coroner, Escheator, and other such Officers of Justice. But Mr. Marrow adviseth, that such Persons be not bound *versus cunctum populum*; but only against such Persons as shall demand it, lest otherwise it should argue them unworthy and unmeet to bear or exercise any such Office in the Commonwealth, if there should be Cause to bind them *versus cunctum populum*.

Si in overt Sessions un Justice de Peace Abuser auter Justice de Peace semble que les autres Justices poit luy lier al Peace. Crompt. 122. a. Quare fil ne amnasse lauter?

One Justice of Peace may grant this Surety to any Man against one of his Fellow Justices (and yet the Commission is joint) but great Discretion is herein to be used.

Wife. Yea, a Justice of Peace, upon Demand, may grant this Surety of the Peace against his own Wife: and yet he and his Wife are but one Person in Law.

Justice. If Surety of the Peace be demanded against a Furor at the Sessions, it is grantable; but yet the same should not be granted or done before the Sessions be ended.

One Justice of the Peace may demand Surety of the Peace of his fellow Justice against another Man.

If a Man hath Cause to have Surety of the Peace against one dwell-^{Cinque Ports.} ing in the *Cinque Ports*, he must have a Writ out of the *Chancery* directed to the Constable of *Dover*, and to the Warden of the *Cinque*

F. N. B. *Ports*: The Form thereof see in *Fitz. N. B.* 80.

80. The Wife may demand this Surety against her Husband, (if he ^{Feme.} shall threaten to kill her, or outrageously to beat her, or if the Wife hath any notorious Cause to fear that he will do so) and it shall be granted her by the Justice of Peace, or she may have it by *Supplicavit* in the *Chancery*. *Fitz.* 238. f. *Br. Peace* 23.

Fitz. 80. f. The Husband for the like Causes may demand Surety of the Peace against his Wife, *Et si el ne poit trouwe Sureties, el serra com- mit, &c. & issint home poet este rid dun Shrew.* "But it was resol- ved T. 9 *Car. B. R.* that a Husband cannot have Sureties of the Peace of the Wife.

Also the Justice of Peace, upon his own Discretion, may in either of the aforesaid Cases between the Husband and Wife (especially happening in his Presence) grant Surety of the Peace.

Lamb. 81. An *Infant*, under the Age of fourteen Years, may demand this ^{Infant.} Surety, and it shall be granted him.

Also this Surety of the Peace may be granted at the Prayer of any Person against a Feme Covert, or against an *Infant* tho' he be under 14 Years of Age. (For if an *Infant* under 14 hath Discretion to demand the Peace, &c. then hath he Discretion to break the Peace.)

Co. 10. 43. But if an *Infant* and a Feme Covert shall be bound by Sureties only, ^{Crompt.} they themselves shall not be bound, and if they cannot find Sure- ^{239. 9.} ties, they shall be committed to Prison until they have found Sure- ties. And yet if an *Infant* shall be bound to the Peace, &c. by Re- cognizance taken by a Justice of Peace, he shall be estopped to avoid such a Record, if he doth not avoid it during his Minority, for it is not void but voidable, by *Audita querela*, during his Minority. *Dyer* 232.

But if a Feme Covert shall be bound, or acknowledge such a Recog- nissance (though her Husband join with her) yet it is merely void as to the Wife, although she overliveth her Husband.

A Man of *Non sane memoire*; this Surety shall neither be granted ^{f. 5.} against him, nor to him upon his *Request*; and yet if there shall be ^{pos.} Cause, the Justice of Peace (upon his Discretion) ought to provide for his Safety.

A Man that is *Lunatick* (*sc.* who at some Seasons hath the Use of ^{Lunatick.} Reason, and at other Times not) it seemeth this Surety of the Peace may be granted against him; and also that he may demand the same against another.

See Co. 4. And if one of *Non sane memoire*, or a *Lunatick*, be himself bound ^{124 & 111.} by Recognizance before a Justice of Peace, to keep the Peace, it ^{77.} seemeth such Recognizance shall bind them and all others for ever.

But *Quare*, if there be not a Difference to be taken where a Re- cognizance by an *Infant*, or one that is *Non compos mentis*, shall be acknowledged in a Court of Record, or in open Session, and where before a Justice of Peace out of the Sessions.

A Man that is *Deaf*, *Dumb*, and *Blind*, be it naturally (*scil.* that he ^{Natural} was so born,) or accidentally, he shall not have this Surety granted to ^{Infirmi-} him, for he hath no Understanding to ask it, and yet for such a Person, ^{ties.} (or any other Person not having Reason to demand the Peace) if there

be Cause, the Justice of Peace, upon his Discretion, ought to provide for their Safety.

A Man that is born dumb and blind may have Understanding; and therefore it seemeth this Surety may be granted to him, or against him.

But a Man that is born dumb and deaf can hardly have Understanding; for though the Sight be the chiefest Sense, yet by Hearing we come chiefly to Knowledge, and therefore it seemeth not grantable to him, or against him. See *Stamf. de Prærog. fol. 33, 34. Cro. El. 135.*

And yet a Man that is dumb and deaf, or blind and deaf accidentally, may have Understanding, and therefore this Surety may be granted to him, or against him.

Impotent
Person.

Also this Surety of the Peace may be granted against an *impotent Person*, although he be such a one as is not like to break the Peace himself; for he may procure another to kill or beat one: And the common Form of Recognizance is to bind a Man from *procuring Hurt*, as well as from doing Hurt.

§ 6.
Attaint.

This Surety of Peace may also be granted to, or against, a Man attainted of Treason or Felony.

Excom-
municate.

A Man *excommunicate* may have this Surety granted to him or against him. *Crom. 34.*

Abjured.

So also of a Man that hath abjured the Realm; for notwithstanding the Abjuration, he oweth the King his Allegiance, and remaineth within the King's Protection, and the King may pardon and restore him again; *Qui abjurat regnum, amittit regnum. non Regem, Co. 7. 9. b.*

The Manner of Abjuration see *lib. intr. fol. 1.*

Premuni-
re.

A Man attainted in a *Premunire*, may (at this Day) require, and ought to have this Surety granted to him. *P. R. 19 Crompt. 133.*

Alien.

An *Alien born* who is made *Denizen*, may have this Surety; and so *Crom.* of an *Alien born* who liveth in *England* under the King's Protection *134. 1 R. 19.* (although he be not made a *Denizen*.)

And so of an *Alien* whose King is in League with our King; or if there be no Wars between this Realm and that Realm whereof the *Alien* is; for by the common Law, all these may get and have within this Realm any personal Goods, and may sue for the same, and so have the Benefit of the King's Laws and Protection. But an *Alien* who is the King's Enemy, (*scil.* where there is open War between our King and his King) shall not have this Surety granted to him, nor any other Benefit of the King's Laws. *Co. 7. 17. Dyer 2.*

Who shall be said to be *Alien*. See *Co. 7. 16, 17.*

Subjects.

In *Calvin's Case*, 6. *Jac. Reg.* there is a Difference taken between *ante-nati* and *post-nati* in *Scotland*, where it is holden, That *ante-nati* in *Scotland*, *sc.* such as were born before the King's Coming to the Crown of *England*, they are *Aliens born*; the Reason is, for that at the Time of their Birth, they were under the Legiance and Obedience of another King; and he could not be a Subject born of the Kingdom of *England*, that was born under the Legiance of a King of another Kingdom. Ad yet it is manifest, that *ante-nati*, being the King's Subjects, are herein provided for by the Commission it self; the Words whereof are, *Et ad omnes illos qui alicui vel aliquibus de populo nostro, &c.* of which Number *ante-nati* be: So as they may and

and ought to have this Surety granted to them, as well as to any other Subjects. See *Dyer fol. 304 & Pl. 306. a.*

Co. 7. 23. An *Irishman* born is a natural-born Subject, and capable of, and inheritable to Lands in *England*, and therefore may have this Surety.

Co. 7. 17. But it may be questioned, whether an Infidel, Pagan or Jew, shall have this Surety granted to them. For in Law they are *perpetui inimici*; there is between Christians and them perpetual Enmity, and can be no Peace: Neither can they get any Thing within this Realm, nor maintain any Action at all. 12 H. 8. 4.

C H A P. CXVIII. Vide LXIX.

How this Surety of the Peace may be commanded, and how the same Commandment shall be executed.

THE Justice may command this Surety of the Peace either by Word only, or by Writing. §. 1. Paroll.

14 H. 7. 3. 1. By Word only, the Party being in his Presence; as if in the Presence and Hearing of the Justice one Man doth threaten another, or shall make an *Affray* or *Assault* upon another, or do the like Thing tending to the Breach of the Peace, the Justice may command him by Word to find Sureties for the Peace.

14 H. 7. 9. Also if one shall demand this Surety against another, who is then in the Presence of the Justice, and will be sworn that he is afraid of him, the Justice may by Word command the same Party to find Sureties for the Peace.

14 H. 7. 8, 9. And the Justice in such Cases may (by Word only) command the Constable, or any other known Officer, or his own Servant being then present, to arrest such Party to find Sureties for the Peace, and to take the Party into his or their Custody, &c. and if the Party shall refuse to find such Sureties, then the Justice of Peace may commit him to the Gaol.

But if the Party (against whom this Surety of the Peace is demanded) be *absent*, it is otherwise; for a Justice of Peace cannot send for or command any Man to be arrested or brought before him, or to be imprisoned, (*who is not in his Presence*) by Word only, but he must make his Warrant or Precept in Writing. And *Popham*, Chief Justice, said, 'That the Justices of the King's Bench, when they send for any of the King's Subjects, it is either by Writ, or by Warrant, or by a Tipstaff: But the Tipstaff (said he) is by Prescription, except that the Party be in *Westminster-Hall*, &c. See the Case between *Woody versus Bokers & Read-head*; *Termino Mich. Ann. 2 Jac. Regis, Rotul. 480. in Banco Regis.*

This Warrant then must be made in Writing, and under the Justice his Seal; and must be directed to some Officer or other indifferent Person, and must contain the Cause, and at whose Suit, to the Intent the Party to be bound may provide his Sureties, and take them with him. §. 2. By Writing.

The Form of which Precept, see *postea Tit. Warrants, cap. 121.*

§. 3. ^{Before whom to be brought.} The Justice of Peace may make his Warrant to bring the Party ^{Co. 5. 59. Br. Peace 9. Bullst. part 3. p. 78.} before himself, (to find Surety for the Peace) by the Opinion of Wray, Chief Justice; for he that maketh the Warrant, for the most Part, hath the best Knowledge of the Matter, and therefore he is the fittest to do Justice in such Case. And yet the most usual Manner is, to make such a Warrant to bring the Party before the same Justice, or some other of the Justices of Peace of the same County, &c. And Judge *Fineux* his Opinion was, 'That where a Justice of Peace doth ^{21H. 7. 22.} make any Warrant for the Peace *ex officio*, (sc. by Force of the Commission, and not by Virtue of a *Supplicavit*,) there the Party may chuse to appear before him or any other Justice in that County: And that the Party may have his Action of false Imprisonment against the Officer, if he do otherwise compel him. Otherwise it is in the Execution of the Writ of *Supplicavit*, as you may see here *postea*, *sub hoc titulo*.

Who may serve this Warrant, and whether the Officer may make his Deputy; and whether they need shew their Warrant or no; and whether they may break open the Doors, &c. See hereof *Tit. Warrants*, *postea*.

§. 4. ^{How it shall be executed.} The Constable (or other Officer) before he arrest the Party upon such a Warrant, ought first to acquaint him with the Matter, and ^{Ed. 4. 13. Lamb. 92. Yet some Precedents are, Quod Capiat, &c. P. R. 20. & Cromp. 2. 5. Ju. Br. F. imp. 18.} withal to require or charge the Party in the King's Name, to go (with him) before the Justices to find and put in Sureties according to the Warrant: And if the Party shall refuse to do this, sc. shall refuse either to go before the Justices, or to find Sureties, then the Officer (by the Words of the Warrant) may and ought forthwith to arrest him, and may convey him to the Gaol without carrying him to any Justice, and there the Party shall remain until he shall voluntarily offer and find Sureties: And then such Officer ought to be at the next Sessions of the Peace, there to deliver in his Warrant, and to certify all that he did thereupon.

But if the Party shall yield to find Sureties, then the Officer may not absolutely arrest him; but yet the Officer is not bound to go up and down with the Party, to find Sureties, but may keep the Party until he can procure Sureties to come to him: And if afterwards the Party shall make any Resistance, or shall offer to go away, then the Officer may arrest him, and by Virtue of that Warrant may carry him to the Gaol, and may also imprison him in the Stocks, until he can provide Aid to carry him to the Gaol.

When the Party cometh before the Justices of Peace by Force of ^{14 H. 7. Br. Peace 7. & Mainp. 39} this Warrant (or by Force of any other like Warrant for the Peace, Good Behaviour, or a Riot, or the like) the Party must offer Sureties to the Justice of Peace, or else the Justice may commit him to Prison; for the Justice needeth not to demand Surety of him.

Also after that the Party shall be brought before the Justice, if he ^{Co. 5. 50.} shall refuse to find Sureties, the Officer, without any new Warrant, or Command, may carry the Party to Prison, and that by the Words of the first Warrant: And if he shall refuse thus to do, that then, &c. See the Form of the Warrant.

If the Officer do arrest the Party, and do not carry him before some ^{Ed. 46. P. R. 20.} Justice of Peace, to find Sureties, &c. or upon the Refusal of the Party, if the Officer shall arrest him, and do not carry him to the Gaol, in both these Cases the Officer is punishable by the Justices of Peace for this Neglect, (by *Indictment* and *Fine* at their Sessions:) And also the Party arrested may have his Action of false Imprisonment for

the Arrest: For where the Officer doth not pursue the Effect of his Warrant, it will not excuse him of that which he hath done. 21 H. 7. 23 a. 3 H. 7. fol. 3. b. Brian & Br. Faux. imp. 21.

And if the Party be imprisoned for Default of Sureties, and after he who demanded the Peace against him happen to dye, or shall release the Peace, in these Cases the Justices of Peace may make his *Liberate* or Warrant for the Delivery of such Prisoner; for after such Death or Release, there is no Cause to continue the other in Prison. Also any Justice of the Peace may (upon the Offer of such Prisoner) take Surety of him for the Peace, &c. and may thereupon deliver him. §. 5. Dye or release. Liberate.

4E. 4. 16. If the Party imprisoned for not finding Sureties hath a Suit depending in the Common Pleas, he may by the Course of that Court, by 2 H. 7. 24 Br. Privi- leg. 25. 52 a Writ of Privilege, be discharged of his Imprisonment, if the other Party be not ready in the Court at the Day of the Return of the Writ, to pray there new Sureties of the Peace. But *Quare*, for it may be, he which demanded the Peace, hath no Notice of the removing of his Body, and then, how can he be ready in the Court of Common Pleas at the Day? And therefore it may seem a hard Case so to be defeated of this Surety. Lamb. 96.

If the Party hath gotten Sureties, then if the Warrant proceed *ex officio* (and not upon the *Supplicavit*) and be a general Warrant (*sc. to come before me or some other Justice*) the Party may go before any other Justice of Peace to offer his Surety; yet he shall not enforce the Officer to travel to a Justice out of the Division or Limit where they be dwelling, without good Cause: Nay, it is at the Election of the Officer (who is the Minister of Justice) to carry the Party attached to any other Justice of Peace that he will: For it is more Reason to give this Election to the Officer (who in Presumption of Law is a Person indifferent, and is sworn to execute his Office duly) than to the Delinquent himself, who by Presumption will seek Shifts, and weary the Officer; this hath been so adjudged. §. 6. Execution of Warrant.

If the other Justice of Peace (before whom the Party so attached shall come) shall refuse to take such Surety, being offered to him, this is punishable: For such Justice of Peace ought to take it, and to bind him by Recognizance: But yet that must be done in all Points, as the Form of the Precept doth require: And thereupon the same or other Justice of Peace (having so taken Surety for the Peace) may and ought, upon Request, to make his *Supersedeas* to all Officers, and to all other Justices of Peace of the same County, and thereby the said Party shall be discharged from finding other Surety, and from any other Arrest for the same Cause: But by such *Supersedeas* the other Justice cannot discharge the first Warrant of the first Justice, until the Party be bound indeed; nor can give any other Day to the Party to appear at any other Sessions, &c. Refusing. §. 7. Superseded by a Justice of Peace.

Also a Justice of Peace of the County, by a *Supersedeas*, cannot discharge a Warrant awarded by his Fellow Justice, by Force of a *Supplicavit* to him directed out of the *Chancery* or *King's Bench*, to take the Surety of the Peace of one resident in that County. Supplicavit.

Also when a Man doth fear the Surety of the Peace will be demanded against him in the Country, or doth hear that such a Warrant for the Peace is already granted against him by a Justice of Peace; in either of these Cases, he may give Surety of the Peace before any other Justice of the Peace of the same County where he dwelleth, and

and thereupon may have a *Supersedeas* from the Justice of Peace, &c. But in such Case it is fit that the Party be urged by such Justice to put in sufficient Sureties, and that he be bound towards the King and all his People, and to appear at the next Sessions.

If any Officer, having a Warrant from a Justice of Peace to arrest a Man to find Surety of the Peace, shall receive a *Supersedeas* (out of the Chancery or King's Bench, or from any Justice of the King's Bench, or from any Justice of Peace of that County, to discharge the same Surety of Peace, and yet will urge the Party (by Force of his Warrant) to find new Surety for the Peace, the Party may refuse to give it; and if he be arrested or imprisoned for such Refusal, he may have his Action of False Imprisonment against such Officer; for such *Supersedeas* is a Discharge of the former Precept or Warrant. Lam. 101.

The Form of a *Supersedeas* granted by a Justice of Peace, see *postea*, Tit. Warrants.

And this *Supersedeas* is sufficient, though it neither name the Sureties, nor contain the Sums wherein they are bound; but yet it is the better Form to express them both. See 2 H. 7. 1. Lam. 59.

§. 8. If the Party shall mislike to be or stand bound to the Peace, by the Justices of Peace in the Country, then may he (either before or after that he is bound in the Country) go or send to London, and there give Surety for the Peace, (either in the King's Bench, or in the Chancery): And thereupon the Party may have a *Supersedeas* (out of the Court where he hath given such Surety) to restrain the Justices of Peace of the Country from taking any Surety of the Peace of him; and then the Justices of Peace of the Country after the Receipt of such *Supersedeas* must forbear to make any Warrant for the Peace against the Party. And if any Justice of Peace have granted out any such Warrant against the said Party, the said Justice must make his *Supersedeas* to the Officers, thereby commanding them to surcease, to put his former Warrant in Execution, and so to discharge it, and the Party of an Arrest or Imprisonment thereupon. See more *postea*, sub hoc titulo. F. N. Br. 81. a. &c. 238. c.

The Form of a *Supersedeas* for the Peace or Good Behaviour out of the King's Bench, see *libr. intr.* 454. *Quia invenit suffic' securit' pacis nostrae quod ipse se bene geret erga nos & cunctum populum, &c.*

The Form of a *Supersedeas* for the Peace out of the Chancery. See *Fitz.* 81. c. & *Register* 89.

Note, that this *Supersedeas* out of the Chancery may be procured at any Time in the Vacation and out of Term. *F. N. B.* 236. a.

These Writs of Supersedeas from the Chancery or King's Bench, are Commands to the Justice of Peace to stay him from binding the said Party to the Peace, which otherwise he might not deny.

If the Justices of Peace shall not surcease after a *Supersedeas* (out of the Chancery or King's Bench) to them delivered, an Attachment will lie against him or them for such Contempt, and besides they may be fined and imprisoned for it. Lam. 102.

Yea, such a *Supersedeas*, coming out of those High Courts to the Justices of Peace, they ought thereupon to surcease, although such a *Supersedeas* should be awarded against Law.

If such a *Supersedeas* shall be directed to the Justices of Peace and Sheriff; that Justice to whose Hands it shall be delivered may keep it, and may deliver the Label to the Party.

And in these and the like Cases, the Justice of Peace shall do well to send to the next general Sessions of the Peace, as well the said *Supersedeas* (if it come to his Hands) as also the Recognizance which he had formerly taken of the Party (if he have taken any) for the Recognizance might be forfeited before the *Supersedeas* was purchased; or if it were not forfeited, yet the Conusor is not endamaged thereby.

If the Party shall procure such *Supersedeas* (out of the *Chancery* or *King's Bench*) after that he is bound by Recognizance before the Justice of the Peace to keep the Peace, &c. and to appear at the next Sessions, *Quere*, whether the Party sending (by his Servant) such *Supersedeas* to the Justice of Peace at the next Sessions, be thereby discharged of his Appearance there, the Recognizance also being certified thither by the Justice.

It seemeth to some, this Difference is to be holden therein, *sc.* if the Party were bound (before the Justice of Peace) to keep the Peace *against all Men*, &c. and shall after procure such a *Supersedeas*, testifying that he hath found Surety in the *Chancery*, &c. *against all Men for ever*, and shall send this to the Sessions, this shall discharge his Appearance at the Sessions; otherwise if the *Supersedeas* shall testify that he hath found Surety but till a certain Day (which is after the next Sessions.) But yet it seemeth safest in both Cases for the Party to appear to save his Recognizance. See to like Purpose the Case in 28 H. 8. *Dyer f. 25.* where a Man being arrested by the Sheriff upon a *Capias*, found Sureties for his Appearance at the Day, and there came a *Supersedeas* to the Sheriff; and it was moved, whether it were necessary for the Defendant to appear, or not, to save his Bond; or that his Appearance or Surety were discharged by the *Supersedeas*: And the Opinion of the Court was, That he ought to appear for the saving of his Bond. Also the Precedents of Entries are, that the Party bound did shew his *Supersedeas* in Court, and prayed Allowance thereof, and was thereupon discharged.

But because divers contentious Persons (deservedly fearing to be bound to the Peace or Good Behaviour by the Justices of Peace in the Country) do oftentimes procure themselves to be bound in the *Chancery* or *King's Bench*, upon insufficient Sureties, or upon colourable Prosecution of some Person, who will be ready at all Times to release them at their own Pleasure; whereupon his Majesty's Writ of *Supersedeas* is often directed to the Justices of Peace, &c. requiring them to forbear to arrest or imprison the Parties for the Causes aforesaid; by Means whereof the said contentious Persons do greatly disturb their Neighbours, and affront the Justices of Peace, to the evil Example of others; therefore it is enacted by the Statute made 21 Jac. cap. 8. That all Writs of *Supersedeas* to be granted by or out of either of the said Courts of *Chancery* or *King's Bench* shall be void; unless such Process be granted upon Motion in open Court, and upon such sufficient Surety as shall appear unto the Court, upon Oath, to be assessed at 5*l.* Lands, or 10*l.* in Goods in the Subsidy-book at least, &c. And unless it shall also appear first unto the said Court, that the Process of Peace or Good Behaviour is prosecuted against him or them, desiring such *Supersedeas*, *bona fide*, by some Party grieved, in that Court out of which such *Supersedeas* is desired to be so awarded and directed.

" *Mes coment le Supersedeas serra void per ascun des defectz ou*
" *reasons avantdits, uncore les Justices de Peace en Pais doyent sur-*
ceaser sur delivery de ces al aux.

" Si

Lam. 115.
116.
Crompt.
140.

28 H. 8.
Dyer 25.
Crompt.
140.

Lib. Intr.
453.

21 Jac. c. 8.

21 Jac.
cap. 8.
Supersed.

§. 9.

" Si garrant pro pace soit grant vers un que ne osa appeare al
 " Sessions pur feare de auter arrest; &c. son remedy poit estre in deux
 " manners.

1. Devant que soit lye per le Justic' de Peate en pais, il poit doner
 Surety pur les peace in le Chancery ou in Banto Regis, & dilonques
 avera Supersedeas ut supra. Et donque il ne serra lye per les Justic'
 de Peate.

2. Apres que est lye per les Justic' de P. en pais; semble n'ad auter
 remede, mes daver Certiorari (hors del Chancery ou Banco Regis) de
 remover la Recognizance prise per le Justic' de Peate, &c.

C H A P. CXIX.

Now concerning the Recognizance for the Peace.

§. 1.
 Recogni-
 zance.

THIS Recognizance which the Justice taketh for the keeping of
 the Peace is rather of Congruence than by any expresse Autho-
 rity given them. *Fitz. 82. a. 7 H. 4. 34. accord.*

And this Recognizance for the Peace, if the Justice doth take it by
 Force of the Writ of *Supplicavit*, then he ought to execute it, and
 to do in all Things as the Writ directeth him.

But if he taketh the Recognizance *ex officio*, and by Force of the Lamb.
 Commission, and so as a Judge, and not as a Minister; then it¹⁰³
 resteth in the Discretion of the same Justice of Peace wholly to ap-
 point and allow the Number of Sureties, their Sufficiency in Goods or
 Lands, the Sum of Money wherein they shall be bound, and to limit
 the Time how long the Party shall be bound, and such other Cir-
 cumstances.

§. 2.
 Sureties
 and Sum.

In the Book 7 H. 4. f. 34. a. you shall find the Principal to be bound 7 H. 4. 34.
 in 1000 l. and four Sureties, every of them in one thousand Marks
 before Justices of Peace, and for the keeping of the Peace.

Quere, If Justices of Peace may not examine upon their Oaths the Br. Im. 18.
 Sureties concerning their Sufficiency; it seemeth to be the Usage in
 the Courts at *Westminster*: And Mr. *Crompton* saith, that the Justi-
 ces of Peace in their Sessions may do it. *Crompt. 194.*

The most usual Manner and safest Way for the Justice of Peace,
 is, to take two Sureties at the least, besides the Party himself, and to
 bind them by Recognizance to the King, *viz. Domino Regi*: And it
 must always be for the keeping of the Peace.

And yet by the Opinion of Mr. *Marrow* (who wrote in the Time of
 King H. 7.) a Justice of Peace might have taken this Surety by a *Pawn*
 only to him.

Also (by his Opinion) a Justice of Peace might have taken this Sure-
 ty by an *Obligation made to himself*, by the Name of Justice of
 Peace.

Yet if a Justice of Peace had enjoined a Man upon Pain of 20 l. to *Fitz. N.*
 keep the Peace, this had been nothing worth: But in this Case and the Br. 81. D.
 former two Cases, and the like, this one general Reason may be given
 for all, *sc.* that a Man cannot be bound to the King, but only by
 Matter of Record, and therefore such Surety taken by Pawn or Ob-
 liga-

gation, or such Injoining of the Peace, seemeth nothing worth to bind the Party.

P. Ac-
compt. 1. Besides, by the Statute 33 H. 8. c. 39. there is a plain Law made ^{§ 3.}
^{The Form.} (in these and the like Cafes) which willeth, that all Obligations, &c. which shall be taken for the King, shall be made in the King's Name, and by these Words *Domino Regi*: And if any Person shall make or take any Obligation or Recognizance to the King's Use in any other Manner, he is punishable by Imprisonment at the King's Pleasure, &c.

Mar.lett.
6. A Justice of Peace may take a Recognizance, and thereby may ^{§ 4.}
^{Time.} bind the Party to keep the Peace *for one Year*, or for a longer Time, (by his Discretion) yea, he may bind the Party *during his Life* upon reasonable Cause: And this the Justice may do either by his own absolute Authority or upon Complaint to him made, and upon good Cause shewed; as, if the Offender be a *common Barreter*, a *Rioter*, or else in the Justice's Conscience a dangerous Person: But if such Surety be so taken during the Offender's Life, the Justice of Peace can never release that afterwards, and therefore he must be well advised how he granteth such Surety.

Lam. 105. A Justice of Peace, intending to take a Recognizance for the Peace, ^{§ 5.}
^{Recognizance.} and yet maketh no Mention there (nor in the Condition thereof) that it is for the Preservation of the Peace, it seemeth to be void, as being taken *coram non Judice*: for a Justice hath no Authority to take a Recognizance generally, but for Matters concerning his Office specially.

Lam. 106. If the Recognizance be, that the Party bound shall not *beat nor maim A.* it is not good, because it ought to be for the *Keeping of the Peace* (generally) and the Peace may be broken by *burning the House of A.* or the like.

Ibid. If the Recognizance do not limit *any Time of Appearance* for the ^{Time.}
Conuzor, but be generally to keep the Peace; yet it is good, for the Time of Appearance is referred to the Discretion of the Justice, and the chief Scope is, the Keeping of the Peace. *Marrow.*

Also (by his Opinion) if the Recognizance do limit a Time of Appearance, but no Person named, before whom the Party so bound shall appear, then may he appear (in any Place out of the Sessions where he will) before that Justice of Peace which took the Recognizance. *Ibidem.*

But in the two last Cafes, if a Recognizance should be taken in such Manner at this Day, I should think it safe for the Party to appear at the next Sessions for the Peace, and there to record his Appearance. See more *postea*, *sub hoc titulo.*

If the Recognizance be to appear before the Justice of Peace within forty Days, next after the Date or Taking of the Recognizance, and before the End of the forty Days, a General Sessions of the Peace shall be holden, &c. The Party now ought to appear at the same Sessions, *Crompt. 123.* See the like Matter, *Br. Condition 280.*

Also if these Words be in the Recognizance, *sc.* That he shall appear before the same Justice, & *sociis suis*, then must he appear at the next Sessions.

Crompt.
141.
P. Just.
106. If the Recognizance be to appear at any other Sessions after (and not at the next Sessions) 'tis good; and yet by the Statute 3 H. 7. c. 1. It is enacted, That every Recognizance taken for the Peace, by the Justice of Peace, and *ex Officio* shall be certified, (*sc.* sent or brought in) at the next Sessions of the Peace, and there delivered to the *Custos*

Rotulorum, that the Party so bound may be there called; whereby it may seem that every Recognizance taken for the Peace now, ought to be, to appear at the next Sessions.

If the Recognizance be in twenty Pounds to be levied of his Lands ^{Lamb.} *only*, or of his Goods *only*, yet it is good; and this Word [*only*] may ^{107.} seem void: For the Acknowledgment of the Recognizance (before a competent Judge) both maketh it a Debt, and implieth the ordinary Means of Law to come unto it. See hereof *postea* Tit. *Recog.*

If the Recognizance be to keep the Peace towards the King and all his People, but not towards any Person certain, 'tis good.

So if the Recognizance be to keep the Peace towards *A. only*, it ^{F.N.B.} seemeth good, or to keep the Peace towards *A. and his Servants*, ^{80. G.} without being bound *towards the King and all his Subjects*, it seem- ^{Crompt.} ^{141.} eth good.

The best
Form of
Recogni-
zance.

But the best Form is, to bind the Party to keep the Peace towards the King and all his People; for first the Words of the Commission are to find Surety *Erga nos & populum nostrum*: And again, the common Usage is so; and besides, it may otherwise prove dangerous to the Party who hath Cause to crave this Surety of the Peace; for the other Party who shall give me just Cause to crave this Surety against him (because he will not be bound to the Peace towards me) he will perhaps pray to bind himself to the Peace to *A.* who is his Companion, and then if the Justice of Peace shall so bind him, then may he and *A.* go before another Justice of Peace (and that within one Week) and there *A.* may release him of the Peace, and so (I trusting that he is still bound) may be after beaten, maimed or slain by him, or his Procurement:

So then, though the Recognizance being taken in any Manner as aforesaid, may prove sufficient to bind the Party to the King; yet it will not excuse the Justice of Peace from blame, and therefore it is safest for the Justice of Peace to follow the received Form.

§. 6.
Recogni-
zance to be
forfeited.
Supplica-
vit.

The Form of the Recognizance for the Peace see *postea* Tit. *Recognizance*, c. 123.

The Recognizance for the Peace, being thus taken, if it were by Virtue of the Writ of *Supplicavit*, the Justice ought to return the Writ, and to certify (under his Seal) his doing therein into the Court from whence the *Supplicavit* proceeded; and he may also send such Recognizance (so taken by him) with his Certificate, or else he may keep the Recognizance in his Hands still, until he shall receive a *Certiorari* out of the *Chancery*, directed to him for removing it. See more *sub hoc tit. postea*.

But if this Recognizance for the Peace was taken by the Justice ^{H. 7. 7.} *Ex officio*, then he ought to certify, send, or bring the Recognizance ^{P. Just.} to the next Sessions of the Peace, so that the Party bound may be ^{106.} called thereupon; and that if the Party make Default of Appearance, the same may be then and there recorded. See 2 *H. 7. fol. 1.*

§. 7.
Process.

If a Man do forfeit his Recognizance (either for Default of Appearance or for Breach of the Peace) the Justices may not award any Process for the *Forfeiture*, but must certify the Recognizance, with the Cause of the *Forfeiture*, into some one of the King's Courts at *Westminster*, *sc.* into the *Chancery*, *King's Bench* or *Exchequer*, that from thence Process may go out against the Party; and so ought it to be, if it be presented by the Jury, that the Party hath forfeited his Recognizance by Breach of the Peace. *Lamb. 570.*

If the Justice of Peace shall not certify such Recognizance at the next Sessions, the said Statute of 3 H. 7. 1. limiteth no Penalty; and yet see *Brook Tit. Peace* 11. That the Justice shall forfeit 10 l. if he do not certify the Recognizance of the Peace at the next Sessions, but Mr. *Brook* there mentioneth the Statute of 3 H. 7. cap. 3. Which Statute was only for Bailment of Prisoners, and certifying the same, and so seemeth to mistake the Statute. *Vide Fitz.* 251.

Cromp.
469.

If he which demanded the Peace shall release it, before the said next Sessions, then, though the Justice of Peace shall not certify the Recognizance, the Statute is not transgressed; for it hath been holden that the Party shall not be called in such Case upon his Recognizance. *Tamen quare inde & vide hic postea.* But howsoever, it is better to certify the Recognizance, for peradventure it was forfeited before the Release made.

2 H. 7. 1.
Br. Peace
11.
F. N. B.
81.

Also, he that demanded this Surety, or he that is bound to the Peace, may by a *Certiorari*, remove such Recognizance into the Chancery or King's Bench, before the Justice hath certified the same to the Sessions. And so in Case the Justice shall not certify the same thither. *Fitz.* 81. And then the Party bound need not appear. See *hic postea*, The Form of the Justice's Return of such *Certiorari*, and of the Recognizance.

§ 8.
Recognizance removed.

If the Justice of Peace was deceived in the Sufficiency of the Sureties, he or any other Justice, may afterwards compel the Party to find and put in other sufficient Sureties, and may take a new Recognizance for the same; for that the Precept is *Ad inveniend. sufficientem securitatem*. But if the Sureties die, the Party principal shall not be compelled to find new Sureties. See more *postea*, *sub hoc tit. & postea tit. Bailment*, cap. 114.

§ 9.
New Surety.

CHAP. CXX.

What Things shall discharge this Recognizance (of the Peace) or the Party of his Appearance at the Session.

30 H. 6. 26.
Br. Surety
10. and
Def. 60.

Whether a *Supersedeas* out of the Chancery, &c. shall discharge the Party of his Appearance, see *antea sub hoc tit. c. 69.*

§ 1.
Supersedeas.

He who is bound to the Peace, and to appear at a certain Day, must appear at that Day, and record his Appearance, although he who craved the Peace, cometh not to desire it may be continued, otherwise the Recognizance shall be forfeited.

And if a Man be bound to keep the Peace towards the King and his People, but not towards any Person certain, and to appear at such a Sessions, the Court at that Sessions may make Proclamation, That if any Man can shew Cause, why the Peace granted against such a one shall be continued, that he speak, &c. And if no Person cometh to demand the Peace against him, or to shew Cause why it should be continued, then the Court may discharge him. But if a Man be

§ 2.
Proclamation.

bound as aforesaid, and especially to keep the Peace towards *A.* there, tho' *A.* cometh not to desire the Peace may be continued, yet the Court by their Discretion shall do well to bind him over till the next Sessions, and that may be to keep the Peace against *A.* only, if they shall think good: For it may be that *A.* who first craved the Peace is sick, or otherwise letted, so as he cannot come to that Sessions to demand the Continuance of the Peace; and in some Places in *Lamb. 12.* such Case, they ordinarily use to bind him over for two or three Sessions together, by Order among themselves.

And yet by the Course of the *Common Pleas*, one that was imprisoned for the Peace (being removed thither by a Writ of Privilege) *2 H. 7. 4. Br. Surety 13.* was there discharged, for that he which demanded the Peace, came not at the Day (of the Return of the Writ) to pray Continuance thereof. See more *antea sub hoc tit.*

If the Justice of Peace shall not certify the Recognizance to the Sessions, yet the Party ought to appear, and to record his Appearance. See such a Matter of a Sheriff, who took Bond of one to appear in the common Bench, at a certain Day, &c. although the Sheriff return not his Writ, &c. yet the Party must appear to save his Bond. *Vide 18 Ed. 4. 18.* for this last Case.

§. 3. Appearance. If the Party who is bound to appear, is so sick that he cannot appear, nor by any Means travel at the Day, yet his Recognizance in *Crompt. 143.* Strictness of Law is forfeit, and so it is by the Course of the Courts at *Westminster, ut dicitur*; yet in this Case, upon the due Proof of such his Sickness, I have known the Justices of Peace (in their Discretion) have forbore to certify or record such Forfeiture or Default; and that they have taken Sureties for the Peace of some Friends of his present in Court, until the next Sessions; for that the principal Intent of the Recognizance was but the Preservation of the Peace. But *quare*, how this is warrantable by their Oath; besides, the Party so bound, might (by a *Certiorari*) have removed his Recognizance into the *Chancery* or *King's Bench*, before the Day of his Appearance, and then he should not have needed to appear at the Sessions, for that the Justices there should have no record whereupon to call him.

But the Civil Law in such Cases is more favourable; for with them the Rule is, *Citatus ad locum non tutum, non ardeatur comparere*: As if the Plague shall be hot in the Place or Town where the Party is to appear, or where their Court is held. This is a good Excuse in their Law, *ut dicitur*.

So if there shall be any other inevitable Accident, whereby the Party shall be hindred, as by any *great Snow*, Inundation of Waters, or by any Fall, or other Hurt or Sickness, whereby he is in Danger of Death: In these and the like Cases, the Civil Law doth dispence with Default, referring these Things *Arbitrio Judicis*.

See *Mr. Brook Tit. Saver de Default 17, 28, 45 & 48.* and divers other Books, shewing, That the Common Law doth allow divers Cases to save a Default of not appearing in Court, the same being pleaded and proved, as *Imprisonment, Inundation of Waters, Tempest, and Sickness. Vide lib. Intr.*

§. 4. Baron and Feme. If the Husband be bound, that he and his Wife shall appear at such Sessions, and that they shall keep the Peace in the mean Time, &c. and at the Day the Husband doth appear, but not his Wife. Here

Mr.

Crompt.
144.

Mr. Crompton saith, the Recognizance is not forfeit; for if there shall be Cause to continue this Surety of the Peace against the *Husband and Wife*, he shall be bound, and not the *Wife*; and therefore the Wife's Appearance is not greatly material, *Tamen quere & vide Fitz. Forfeiture* 17. 8 E. 2.

21 E. 4. 40.
Lamb.
113.

If a Man be bound to the Peace during his Life, or generally, without any Time or Day limited, in such Case neither the King, the Justice of Peace, nor the Party, can discharge this Recognizance, during the Life of the Party so bound, by Release or otherwise. *Br. Peace* 17. §. 3.
Release.

Also it hath been holden, that the Justice of Peace, who upon his own Discretion, hath compelled one to find Surety of the Peace upon a certain Day, and hath taken Recognizance for his Appearing, &c. may upon the like Discretion release the same before that Day; and that such a Release will discharge the Recognizance taken by that Justice, if it were not forfeited before, and will also discharge the Party so bound of his Appearance; for that here all this Business depends only upon the Discretion of the Justice of Peace who bound him. See *Fitz. Just. de P. fol. 9. Lamb. 113. & Crompt. 139.*

Again, it hath been holden, if a Justice of Peace shall grant the Peace at the *Request of another* (sc. at the Suit of *A.*) and the Recognizance be taken to keep the Peace against *A.* only, then (before the next Sessions) may *A.* only release it (and none other) and that Release being certified at the next Quarter-Sessions, will discharge the Party so bound of his Appearance, so as he shall not be called upon his Recognizance; for that Release being so certified, is now become of Record as well as the Recognizance.

Br. Peace
17.

If the Recognizance were to keep the Peace *Versus cunctum populum & precipue versus A.* yet may the same *A.* release it: For although this may seem popular, and that all others shall have Interest therein as well as *A.* Yet as it appeareth, by the Word *Præcipue*, it was specially taken for his Safety: But the contrary was holden by all the Justices, 21 E. 4. 48. sc. That the Party at whose Suit the

Lamb. 11.

same was granted, cannot release the same. And Mr. Lambert alloweth best of that Opinion, nevertheless the Usage now is, and long hath been, as is afore said, as appeareth by Mr. Brook Tit. *Peace* 17.

But (in these former Cases) although this Surety of the Peace be released, and the Parties agreed, yet the Recognizance shall not be cancelled by the Justice of Peace, for peradventure it was forfeited before such Release made: And therefore the Justice of Peace shall do best, nay, ought to certify such Recognizance, together with the Release, the next Quarter-Sessions.

The Form of the Release of the Justice of Peace see *postea* Tit. *Release.*

The Form of the Release of the Party see *ibidem.*

Note, It hath been holden that the Party who first demanded the Peace, might release the same before the same Justice of Peace that took the Recognizance, or before any other Justice of Peace.

Note also, that to release such Surety of Peace by Deed under his Hand and Seal, is nothing worth.

But yet it is now holden, That neither the Justice of Peace, nor the Party can discharge the Recognizance of the Peace by their Release out of the Sessions. For first the Recognizance is made to the King,
and

and therefore none but the King can release or discharge the same. Secondly, the Recognizance is taken for the Appearance of the Party, &c. (as well as for his Keeping the Peace) and the Release of the Justice, or of the Party, cannot discharge the Appearance of the Party bound. And therefore notwithstanding that the Justice of Peace, out of Sessions, shall make or take any Release of the Peace, yet it shall be safe for the Party bound, to appear to save his Recognizance; and upon the Certificate made by the Justice of Peace to the Sessions of such Release, the Conusor shall be there discharged (at least) against the Party who craved the Peace.

And in Truth, the Appearance of the Party bound, seemeth requisite, notwithstanding any Release made. First, to save his Recognizance, as aforesaid: Secondly, that others may object against him (in the open Sessions) if he hath broken the Peace, so as he may be there indicted, &c.

§. 6. Discharge. Note also, the King can in no Case release or pardon the Surety of the Peace, nor such Recognizance (taken in the Behalf of any of his Subjects) until it be forfeited, for the Mischief that may come to the Party thereby, but being forfeited, then the King, and none other may release and pardon the Forfeiture.

Death. But the Death of the King dischargeth this Surety of the Peace taken by his Subject: For the Recognizance is to keep the Peace of the King (*then being*) and when he is dead, &c. it is not his Peace. *1 H. 7. 1. Br. Peace 15. Br. Cor. 21 Surety 20.*

Also the Death of the Recognisor (*sc.* of the Party principal that is bound) dischargeth his Surety of the Peace and the Recognizance, *Lamb. 116.* See 21 *Ed. 4. 70.* and 15 *H. 7. 2. & 13.*

Forfeited. Also the Death of the Party, at whose Suit the Peace was taken, dischargeth the Recognizance, if it were to keep the Peace against him alone. *Lamb. 116.*

But yet in these three former Cases, such Death shall not discharge the Recognizance, if it were forfeited before; and therefore it shall be best for the Justice of Peace to send to the next Sessions such Recognizance, (notwithstanding such Death) else the King may be defrauded of a Forfeiture, if any were before.

The Death of the Sureties shall not discharge the Recognizance, neither shall the Party principal be compelled to find new Sureties after their Death; for if the Peace be broken after their Deaths, their Executors shall be charged therewith; and there is no Mischief by their Death; yet *alii è contra ibid. sc.* That the Principal shall be compelled to find new Sureties. *21 E. 4. 40. Br. Peace 17.*

**Superse-
deas.** Also such Surety for the Peace may be discharged by a *Superse-
deas* made by another Justice of Peace of that County, or by a *Superse-
deas* out of the Chancery or King's Bench.

If the King and the Recognisor be at Issue upon the Breach of the Peace, and the King waives the Issue; yet is not this Recognizance discharged, but remaineth in Force, and may be sued again upon a new Breach of the Peace afterwards. *21 H. 4. 40. 10 H. 7. 21. Br. Rec. 21.*

C H A P. CXXI. Vide LXXII.

*What Act shall be (or makes) a Forfeiture of the Recognizance taken for the Peace.*Lamb.
117.

Whatsoever Act is a Breach of the Peace, the *Doing, threatening or intending thereof*, against the Person of another being present, is a Forfeiture of his Recognizance. §. 1.
What is a Breach of the Peace.

18 E. 4.

28.

Br. Peace

16.

And therefore first, this Breach of the Peace may be committed by using any *threatning Speeches* to the Person of another; therefore all *Menacing*, or *Threatning to kill or beat another* to his Face, is a Forfeiture of his Recognizance; otherwise, if the Party so threatened be absent. And yet if the Party so bound shall threaten to kill or beat A. who is absent, and after shall *lie in wait* for him to kill, or *Words* beat him, this is a Forfeiture of his Recognizance, without any *Threatning, Assault, or Affray to the Person*. 22 E. 4. 35. *Crompt.* 135.

So *Assaults*, *sc.* to strike at, or offer to strike at a Man, although he never hurt or hit him; this is an Assault, 22 *Ass. Pl.* 60. And this is a Forfeiture of this Recognizance. See *Crompt.* 137. b. & 40 E. 3. fol. 40. Assault.

Much more all *Affrays*, or violent and malicious Batteries, Strikings, *Affray.* Beatings, Woundings, or other Misintreatings of the Person of another, are Forfeitures of this Recognizance.

The Difference of these three are, Menacing beginneth the Breach of the Peace, Assaulting increaseth it, and Battery accomplisheth it.

Or thus, Battery, is the Wounding or Beating of another.

Assault is, when one unlawfully sets upon the Person of another, offering to beat him, although he beats him not, or striking at him, though he strikes him not. *Ibid.*

Hither also belongeth Lying in wait, Besetting his Mansion-House, and not suffering his Servants to go in and out, &c.

Menaces are threatning Words to beat another, or the like, for fear whereof he dares not go about his Business. *Ibid.*

For Breaches of the Peace, without Word or Blow given, as to go with Weapons, or Company unusually, which be in *Affray de pais*, see *Pag. seq.*

If he who is bound procureth another to break the Peace, and that it be done indeed; this is a Forfeiture of his Recognizance. §. 2.
Command.
Br. Peace 20.

Lamb.
130.

Also false Imprisonment, or Arresting of another without Warrant, is a Forfeiture of his Recognizance. Now false Imprisonment is any unlawful Restraint of Liberty.

So to thrust another into the Water, whereby he is in Danger of drowning, is a Forfeiture of this Recognizance.

So to ravish a Woman against her Will.

So to commit Burglary, Robbery, Murder or Manslaughter (all which are to the Person of another) or to procure the same; all and every of these are Forfeitures of this Recognizance.

So

So to do any Treason against the Person of the King; this is a Breach of the Peace, and a Forfeiture of this Recognisance: For although the Words of the Recognisance usually be, *Quod gerat pacem erga cunctum populum Domini Regis, & precipue erga A. B.* (and is not *erga ipsum Dominum Regem & cunctum populum, &c.*) Yet because this Fact is done against the Head of the Body of the whole Realm, it is to be adjudged a Prejudice and Hurt *Ad cunctum populum*, and a Breach of the Peace in the highest Degree.

But Note, That the Act which must make a Forfeiture of a Recognisance for the Peace, must be *done or intended to the Person of another* (by the Opinion of Mr. Marrow.) And the Book of 2 H. 7. importeth as much, saying, that this Surety of Peace is not broken without an Affray, Fighting, Beating, or the like. Mar. 1. c. 7.
2 H. 7. 2. b.

And yet to be riotously assembled, is a Breach of the Peace, and a Forfeiture of this Recognisance, ' for that it is *in terrorem populi*. ' Nay, if two Justices of Peace shall record a Riot upon their View (against a Man so bound to the Peace) although it were no Riot, &c. yet he cannot plead *Not Guilty* in a *Scire facias* upon his Recognisance. Marr. Lamb. 311.

Also to wear Armour, or Weapons not usually worn, or to go with an unusual number of Attendants, seems also to be a Breach, or Means of Breach of the Peace, and a Forfeiture of this Recognisance; for they strike a Fear and Terror in the People, and be in *Affray del pais*. See *Br. Surety* 12, & *hic*.

He that is bound to the Peace, ought to carry himself well in his Behaviour and Company. See *antea sub hoc tit. & postea tit. Surety for the good Behaviour*.

§. 3. Yet the having of Weapons or Company unusual, are in some Battery justifiable. Cases allowed and lawful, and are no Breach of the Peace. See hercof *postea Tit. Posse Comitatus, & postea, Tit. Riots*.

Also though Assaults and Batteries be for the most Part contrary to the Peace of the Realm, and the Laws of the same, yet some are allowed to have a natural, and some a civil Power over others; so that they may (in reasonable and moderate Manner only) correct and chastise them for their Offences, without any Imputation of Breach of the Peace; yea, they may (by the Law) justify the same; and so in such Cases the Beating or Battery of the Person of another, maketh no Breach of the Peace; but the Manner of the Battery only.

And therefore the Parent (with Moderation) may chastise his Child within Age.

So may the Master his Servant or Apprentice, for their evil Service. Ex. 21.

So may the Schoolmaster his Scholars. 20, 21.

So may a Gaoler (or his Servant by his Command) his unruly Prisoners.

So may any Man his Kinsman that is mad, &c. And none of these shall be in Peril therefore to forfeit any Recognisance of the Peace. Plow. 18.

Note, That the Master may strike his Servant with his Hand, Fist, P. Fight. small Staff or Stick for Correction; and though he do draw Blood ing. thereby, yet it seemeth no Breach of the Peace, as appeareth by the Statute of 33 H. 8. cap. 12.

Master
and Ser-
vant.

And

And where the Servant shall be negligent in his Service, or shall refuse to do his Work, &c. There the Master may chastise his Servant for such Negligence or Refusal; so as he doth it not outrageously.

38H.6.25. But if the Servant shall depart out of his Master's Service, and
Br. Faux. the Master happen after to lay hold of him, yet the Master in this
Imp. 17. Case may not beat or forcibly compel his said Servant against his Will to return or tarry with him, or do his Service; but either he must complain to the Justice of Peace for his Servant's Departure, or he may have an Action of Covenant against his Servant, if being required to do his Service he shall refuse it. See *Antea* Tit. *Laborers.*

38H.6.25. And as the Master without the Breach of the Peace cannot by Beating or Force, compel his Servants to serve him against his Will; no more can a Guardian compel his Ward by Beating or by Force to come unto him, or tarry with him against his Will.

21 Ed. 4. 6. Also the Schoolmaster, with a Rod, may chastise his Scholar
Lib. Intr. which is careless and negligent in Learning, or that shall abuse his
613. School-fellows, or for other the like Occasions.

21 Ed. 4. 45. Also it is lawful for the Parents, Kinsmen, or other Friends of a
22 Aff. p. Man that is mad or frantick (who being at Liberty, attempteth to burn
36. an House, or to do some other Mischief, or to hurt himself or others) to take and put him into an House, to bind or chain him, and to beat him with Rods, and to do any other forcible Act to reclaim him, or to keep him so as he shall do no Hurt. *Br. F. Imp. 35.*

Lib. Intr. Also if a Constable, Serjeant, Bailiff, or other Officer of Justice,
612. or any other being of their Company, for the better executing of
Stamf. 13. their Office, shall be forced to strike any Person that will not yield
14. to their Arrest, or that shall resist, or flee from their Arrest, they
21 H. 7. shall not be in any Danger to forfeit any Recognisance of the Peace,
39. by any such Assault or Striking, but may well justify such Act.

Lib. Intr. Also it is no Breach of the Peace for any private Man to beat,
611. strike, or wound another in Defence of his own Person from killing
16 Ed. 4. wounding, or beating, but is a Thing justifiable. And in Action of
11. Trespass, *Affault & Battery*, the Defendant may plead, *son assault demesne, sc. Qua il fait ceo in Defence luy mesme, encontre le assault del Plaintiff*, &c. And yet, if another shall assault me, if I may escape with my Life, or without being wounded, maimed, or hurt, it is not lawful for me to beat or wound the other who first made the Assault, but I must first flee, or go from him so far as I can.

25 E. 3. 42. 2 H. 4. 8. 33 H. 6. 18. *Br. Tr. 28. 71 Cr. 137. hic.*

Sed vim vi repellere licet, modo fiat moderamine inculpatæ tutelæ.

Non ad sumendam vindictam, sed ad propulsandam injuriam. Co. L. 162.

By the Civil Law, he shall not be said to have done a Wrong, who for his Safe-guard, after the same Manner whereby he is assaulted, doth defend himself, as when a Man is assaulted by Weapons, he may resist with Weapons: But if he do exceed Measure, in repelling an Injury; as if being wronged in Words, he shall resist with Weapons, and by such Resistance do beat or wound the other Party, he which is so beaten or grieved, may have his Action, and shall recover Damages, &c.

And to prescribe some Temper and Moderation in the Resisting of verbal or actual Injuries, one hath these Verses:

F f f

Res

*Res dare pro rebus, pro verbis verba solemus,
Pro busis busas, pro trufis reddere trufas.*

Things must be recompenced with Things, Buffets with Blows,
And Words with Words, and Taunts with Mocks and Mows.

Or rather by the Law of God and Nature, we should practice
This Lesson.

Per te nulli unquam injuria fiat,

Sed verbis aliisque modis fuge ledere quemquam,

Quod nulli nolles, aliis fecisse caveto:

Quodque tibi velles, aliis prestare studeto.

If one Trained Soldier hurt another by Mis-chance, and not wil-
lingly, or by Negligence, it is excusable in an Action of Trespafs or
Assault. *Hobart's Reports, Weavers Case, p. 189.*

If two or more do agree together to play at Back-sword, Foot-
ball, or such like, and one of them doth wound and hurt another,
the Party hurt, shall not have an Action of Trespafs therefore against
the other; for that it was by Consent, and to try their Valour, and
not to break the Peace. *Fitz. Bar. 244.*

Yet if such a Man were before bound to the Peace, such Act seem-
eth to be a Forfeiture of his Recognisance. See *Br. Cro. 229.* For
although such Sports be suffered, yet they are not lawful. ^{Lamb. 132.}

^{§. 5.} Also it is no Breach of the Peace, for a Man to beat him that doth
In Defence of others. assault and would beat him, wound or ill intreat his Wife, Father,
Mother, or Master, but is justifiable.

So if the Wife shall beat him, that shall assault, and would beat
or evil intreat her Husband.

So if the Father or Mother shall beat him that doth assault, and
would beat or evil intreat their Child, being then within Age, and
not able to defend it self.

^{Servant.} But though the Servant may lawfully beat him that doth assault,
and would beat or evil intreat his Master or Mistress; yet the Servant
cannot justifie the Beating of another, in Defence of the Father,
Mother, Brother, Sister, Son, or Daughter of his Master or Mistress,
for he oweth no Obedience or Duty to any of them. See *Fitz.
Bar. 73. & 102.*

By some Opinions, the Master cannot justifie the Beating of him ^{P. R. 7.}
that doth assault and would beat his Servant; But the Master with ^{P. Justific.}
a Sword, Staff, or other Weapon, may defend his Servant assaulted ³
from being beaten, in Respect of the Loss of his Service. Yet Mr. ^{Lamb.}
Lambert and Mr. *Crompton* are of Opinion, that the Master may ^{132.}
beat another in Defence of his Servant. But *9 E. 4. Fitz. Bar. 102.* ^{Crompt. 136.}
contra.

Neither can the Farmer or Tenant justifie such an Act in Defence ^{Lamb.}
of his Landlord, nor a Citizen, &c. in Defence of the Mayor (or ^{132.}
Bailiffs) of the City, or Town Corporate, where he dwelleth.

And yet where the Life of any Person is in Danger by beating
of another, there any Stranger may lawfully resist it, and that
with Force, and beating of him which offereth such Violence.
Vide 21 H. 8. 2. b. hic.

^{§. 6.} Also the Law doth tolerate a Man to beat another for the Preser- ^{9 E. 4. 21.}
In Defence of my Goods. vation of his Goods; and therefore he that shall attempt by Force ^{19 H. 6. 31.}
to take away my Goods wrongfully, whether they be Goods where- ^{65.}
of I have a lawful Property, or such Goods whereof I have only ^{L. b. Intr. 611.}
a Possession by the Bailment of another; I may justifie to defend the
same

same by Force; and if I shall hurt or beat such a Person, it is no Breach of my Recognizance for the Peace. *Quere*, If I shall wound him by such beating, that is not justifiable; but if I kill him, it is Felony. And in both these last Cases, it is a Breach of the Recognizance. See *hic*.

If another Man will take away my Goods, I must first lay my Hands upon him; and disturb him; and if he will not leave, then I may beat him, rather than he shall have or take away my Goods.

10 Ed. 4. 6. The same Law is in every Case, where another shall attempt by §. 7.
5 H. 4. 9. Force to take away, or to put me out of Possession of my Land, Possession
11 H. 6. 33. Freehold, Copyhold, or Lease, or to stop or turn my lawful Highway, or my ancient River or Water-course leading to my Mill: In these, and the like Case, if I shall disturb him therein, whereupon he doth assault, and attempt to beat me, I may justifie to beat him again, as well in Defence of my Person, as of my Possessions; but not to kill him.

The same Law is also in every Case, (where an Offender is by Order of Law punished with Whipping, Stocks, Pillory, or otherwise, for any Offence by him committed, contrary to the Laws or Statutes of the Realm) There is no Peace broken, nor any Recognizance of the Peace forfeited by him or them, which shall lawfully execute any such Punishment.

Lamb.
132.

Note further, that there are divers Things which may be done against the Peace, and divers Offences, for which an Indictment *contra pacem* will lie; and yet the Committing or doing of such Offence or Act, shall be no Forfeiture of the Recognizance for the Peace: For that the Act that shall be a Forfeiture of such a Recognizance, must be done or intended unto the Person as aforesaid, *vel in terram populi*; therefore to enter into Lands where he ought to bring his Action, or to disseise another of his Lands.

Marr.
lect. 7.

Or to enter into Lands or Tenements with Force, being without Offer of Violence to any Man's Person, and without publick Terror, §. 9.
Crom. 136. Where Things done vi &c armis, break not the Peace.

Or to do a Trespass in another Man's Corn or Grails.

Or to take away another Man's Ward.

Or to take away another Man's Goods wrongfully, if so it be not from his Person.

Marr.
lect. 7.

Or to steal or take another Man's Horse, or other Goods feloniously, being not from his Person.

7 H. 7. 8.

All these, and the like, be Breaches of the Peace, and yet these will make no Breach of the Recognizance, nor Breach of the Peace, within the Meaning of the Commission of the Peace.

Note, that if a Man be bound in such a Recognizance for himself and his Servants, if any one of them break the Peace, the whole Recognizance is forfeited. *Et sic in familiis*.

Note also, that the Sureties may plead that the Party Principal hath not broken the Peace, although upon Issue the same shall be found against the said Principal; for they are Strangers thereto. *First Averment*. 46.

C H A P. CXXII. Vide LXXIII.

Now concerning the Writ of Supplicavit.

- § 1. Supplicavit.** **THE** Forms of this Writ out of the Chancery, are of divers Sorts, as you may see, *Fiss. N. B. 8. d. & Register 89.*
- § 2. To whom directed.** By which Forms of the Writ it appeareth, that it may be directed to the Justices of Peace, or to one of them, or to the Sheriff, or to every of them, to cause the Party that is to be bound, to come before him or them, to find Surety for the Peace. And this Writ may be, that the Principal shall be bound in such a Sum, and the Sureties in such a Sum certain, (and that may be in what certain Sums the Demandant will) or the Sums may by the Writ be referred to the Justice of Peace, &c. with the Clause therein contained, *Pro qua responderi volueris.* And the said Writ is farther, that if the Party shall refuse, &c. that they shall commit him to the Gaol, *Quousque,* &c. and that when they have taken such Surety, they do certify the Recognizance (which they have so taken) under their Seals, and return the Writ into the Court from whence the same was awarded, and that without Delay.
- § 3. Execution of it.** And for that this Writ is of divers Forms, the Justice of Peace must have a Care that he do execute the same in every Behalf, as the same shall direct and appoint him.
- § 4. Supersedeas.** When the Writ doth refer the Sum (wherein the Principal and his Sureties shall be bound) to the Justices, &c. then it resteth in their Discretion; but yet it is then safe for them to take good Sureties, and to bind them in good Sums, and the rather, when the Clause is in the Writ, *Pro qua responderi volueris.*
- § 5. Deputation.** When this Writ is directed to the Sheriff, and to all the Justices of Peace of that County, and is delivered to any one of them, he only to whom it is first delivered, ought to execute it (in every Behalf,) *sc.* He only shall make a Warrant, &c. returnable before himself, and he only shall take Sureties, and make Return thereof (only) without any other.
- § 6. Deputation.** The Form of a Warrant for the Peace, upon a *Supplicavit*, see *postea*, Tit. Warrants.
- § 7. Deputation.** Also the same Justice of Peace after such Surety taken, may make the Party a *Supersedeas* to discharge him from any other Arrest, or to deliver him being in Prison for the Peace, (at any other Man's Suit.) *Crompt. 127. b.*
- § 8. Deputation.** The Form of such *Supersedeas* see after Tit. *Precedents.*
- § 9. Deputation.** The Party who is attached upon this Writ of *Supplicavit*, can not be bound before any other Justice of Peace, but only before him from whom the Warrant proceeds; neither can another Justice of Peace (by a *Supersedeas*) discharge such a Warrant made by his fellow Justice, by Force of this Writ.
- § 10. Deputation.** The Justice or Sheriff, to whom this Writ shall be delivered, may make a Deputy herein, *sc.* may make his Warrant to the Bailiff, *iff,*

21 H. 7.

Br. Peace.

9.

9 E. 4. 32.

F. Faux.

Imp. 4.

Roll's
Rep.
Part 2.
p. 348.

liff, Constable, or other Person indifferent, to apprehend the Body, or to cause the Party to come before him (the said Justice or Sheriff) to find Sureties, &c. And that if he shall refuse, that then the Constable, &c. shall carry him to Prison, there to remain, until he shall find Sureties; and yet the Writ of *Supplicavit* is to commit the Party to the Gaol, if he shall refuse before the Justices, (*Si coram vobis, vel re recusaverit, &c.*) But the Justice or Sheriff cannot give their Power to another to take this Surety; for that is a judicial Power which cannot be assigned over. Neither can they make any Deputy therein; but they must take this Surety themselves; and the Bailiff or Constable who apprehended the Body, cannot take this Surety. *Br. Office 39. & Faus Imp. 34.*

A *Supplicavit* is directed to the Sheriff, and four Justices of Peace, so that they or any Two of them shall take a Recognizance; the Writ is executed by two Justices which take the Recognizance, and the Sheriff returns it as taken by them, and good. *Leonard's Case.*

Tun. 21 Jac. Roll's Rep. Part 2. p. 348.

If the Party shall make Resistance upon the Execution of this Writ, the Officer may take *Posse Comitatus*, i.e. the Help of his Neighbours to aid him to arrest such Party. See *postea* Tit. *Posse Comitatus*, or else the said Justice may make his Warrant to the Sheriff, to apprehend the Party, and upon Resistance, the Sheriff may take *Posse Comitatus* to arrest the Party.

F. N. B.
80. D.

He that is to be bound to the Peace, by Force of this Writ of *Supplicavit*, out of the *Chancery*, is to be bound against him only that sueth out the Writ, as appeareth by the Form of the Writ aforesaid.

But yet at this Day it is used otherwise, and I once received out of the *Chancery* a special Writ of *Supplicavit*, directed *Custodibus pacis, ad eum. & eorum cuilibet*, commanding us to take Sureties for the Party to be bound, *Quod ipse dampnum vel malum aliquod alicui de populo nostro, & impetitis eidem Joh. &c.* (that sued out the Writ) *non fac. nec fieri procurabit.*

F. N. B.
80. D.

Also by this Writ of *Supplicavit*, the Party (against whom the Writ is sued forth) shall be bound to the Peace for ever (if he be taken); for the Writ containeth or mentioneth, not that he shall be bound to keep Peace until any certain Time, but generally (*ad sufficientem securitatem inveniendam sub pana, &c.*) And therefore to prevent this, the Party (before he be attached) may come into the *Chancery*, and there find Sureties, and be bound until a certain Day, that he shall do no Hurt, &c. unto the Party that sued forth the *Supplicavit*; and thereupon he shall have a *Supersedeas* out of the *Chancery*, directed to the Justices of Peace, and to the Sheriff, or to one of them, commanding them to surcease to arrest the said Party, or to compel him to find any Sureties, &c. And that if they have arrested or imprisoned him, for this Cause, and none other, that then they deliver him, &c. *Fitz. 18. a.* The Form of the *Supersedeas* see Register 89.

F. N. B.
812.
Crompt.
142.

And if the Party against whom this Writ is sued forth, cannot travel, (or else will not travel) to bind himself in the *Chancery*, then he may cause some of his Friends to be bound, or to find Sureties in the *Chancery* for him, according to the *Supplicavit*; and thereupon they may purchase a *Supersedeas* out for him, directed to the Justices of Peace, and to the Sheriff, and by this *Supersedeas*, the Justices and the Sheriff shall be commanded to take also Surety of the Party himself

§ 8.
Avoidance.

§ 6.
Recognizance.

§ 7.
Time.

self, in the Country (according to the Writ of *Supplicavit*) that he shall keep the Peace, &c.

§. 9.
Superse-
deas.

Also, if the Party happen to be arrested and imprisoned upon this Writ, yet if he can procure a *Supersedeas* out of the Chancery, it seemeth, by the Words in the End of the *Supersedeas*, that this will discharge him of the Arrest or Imprisonment.

After the
Arrest.

Now after the Party is arrested and imprisoned (upon this Writ) the Means for him to procure a *Supersedeas* out of the Chancery, must be:

1. Either to get some of his Friends to be bound in the Chancery for him, and they to get a *Supersedeas* at *supra*;
2. Or else to get a Certificate to the Lord Chancellor, from three or four Justices of Peace in this Behalf, Signifying, That the Party Plaintiff never demanded the Peace in the Country; and farther, That the Plaintiff is a contentious Man, and the other Party of good Name: And upon such Certificate (*diciter*) they will either discharge the Party, or else grant him a *Supersedeas*.

§. 10.
Where.

This Writ of *Supplicavit* is granted (or may be granted) in the Chancery, or King's Bench, upon great Cause shewed and proved there, and is (or ought to be) granted upon Oath, that the Party is in fear, &c. of some bodily Hurt, &c. F. N. B.
79. H.
Lamb. 86.

But this Writ of *Supplicavit* hath often been procured rather of Malice, and for Vexation, than upon any just Cause. And Sir Edward Coke speaking of such as maliciously shall purchase any special *Supplicavit* of the Peace, (and that by Fraud and Malice, to enforce the other Party, *Ad redimend. vexationem*, to give them Money, to yield them other Composition) brandeth them as Barrators and Oppressors of their Neighbours; oppressing thereby the Poor and Innocent by Colour of Law, which was ordained to protect the Innocent from all Oppression. Neither was this a Wrong only to the Party thus maliciously vexed, but also to all the Justices of Peace in that County, taxing them (*tacite*) as though the Demandant could not have Justice at their Hands in such Case, whereas perhaps the Demandant never desired the same at any of their Hands. And besides, the said Justices of Peace (having in all Likelihood, Knowledge of each Party, and their Behaviours) or any one of the Justices of Peace, might and would, and ought to have yielded the Demandant, upon Request and just Cause shewed to them, as sufficient and good Security in the Country, every Way for his Safety; (*viz.*) as many and able Sureties, and better known, and to have been bound in as great Sums, and for as long Time, if the Cause should so require. So as what should move them to seek (with more Trouble, Charge and Delay to themselves) that Security above, which they may have (more speedily, and with less Charge and Trouble) at home, I see not, but only or chiefly the Vexing and Oppression of their Neighbours, as aforesaid. And for that, this Manner of Oppression grew so common; therefore by the Statute made 21 Jac. c. 8. it is now enacted, That all Proceſs of the Peace or Good Behaviour, to be granted out of the Chancery or King's Bench, against any Person whatsoever at the Suit of any other, shall be void, unless such Proceſs shall be granted upon Motion first made before the Judge or Judges of the same Court, sitting in open Court, and upon Declaration in Writing upon Oath then exhibited, for the Causes for which such Proceſs shall be granted; and unless that such Motion and Declaration be mentioned to be made upon the Back of the Writ (the same Writing to be there entred of Record). And if

See more
before in
this Title.

21 Jac.
cap. 8.

if after it shall appear to the said Courts, that the said Causes expressed in such Writing, be untrue, then the Court may award Costs and Damages to the Party grieved, and may also commit to Prison the Offenders, until they pay the said Costs and Damages.

Now to conclude this Business: If the Surety of the Peace be taken by Virtue of a *Supplicavit*, then must the Justice of Peace make Return of the Writ, and Certificate of his Doings, under his Seal, into the Court from whence the *Supplicavit* did proceed; which may be done in this Manner:

First, Let him write upon the Back of the *Supplicavit*, thus:

" *Executio istius brevis patet in quadam Scheda huic brevi annex.* § 11. The Return of the Supp.

Then may the Certificate or Schedule be thus, and be filed to the Back of the Writ.

" *Ego Johannes Cotton Mil. unus Custod. pacis Dom. Regis in Com. Cantabrig. Certific. in Cancellar. dict. Dom. Regis me virtute istius brevis mihi p. A. B. in eodem brevi nominatum prim. deliberat. personalis. coram me (tali die & loco) venire fecisse T. R. in dicto brevi nominatum ac eundem T. ad sufficientem securitat. & manucaptos pacis inveniendum secundum formam dict. brevis, viz. &c. (As the Writ shall appoint) compulisse in cujus rei testimonium huic presenti Certificationi mea sigillum meum apposui, datum apud C. pred. in Com. pred. 16 Die Januarii Anno Regn. dict. Dom. nost. Caroli Dei Gratia Regis, &c. xx.*

The Justice of Peace may also therewith send the Recognizance, if he will; or may keep and stay the Recognizance until a *Certiorari* come to him for it. The Return of a Certiorari.

And if a *Certiorari* be directed out of the Chancery to the Justice of Peace, for removing of this Recognizance (because it was not sent up together with the Certificate, as there was no Necessity that it should) then that Writ also may be thus answered. And of the Recogn.

Lib. Intr. 453.

Write upon the Back of the *Certiorari* thus:

" *Virtute istius brevis ego L. C. miles unus custodum pacis Dom. Regis Com. C. tenorem securitat. pacis de qua in hoc brevi fit mentio, or unde infra fit mentio dicto Domino Regi in Cancellar. sum sub sigillo meo, distincte & aperte mitto prout patet in Scheda huic brevi annex.* § 12. Certiorari.

And then write the Recognizance *verbatim*, in this Manner here under following, and thereto set your Seal.

" *Memorandum quod 16 die Januarii, (reciting the whole Recognizance to the End) In cujus rei testimonium ego pred. L. C. sigillum meum apposui dat. &c.* The Schedule or Certificate.

And file this Schedule (or note of the Recognizance) to the Back of the *Certiorari*.

F.N.B.81.

The Form of the *Certiorari* you may see F. N. B. 81, 82. C. Vide postea Tit. *Certiorari*.

F. N. B. 11. B.

Also this Form of a Certificate may serve where a *Certiorari* is brought to a Justice of Peace to remove a Recognizance of the Peace or Good Behaviour taken by him *ex officio*, without any Writ of *Supplicavit*. See more *antea*, sub hoc tit. *Surety*, &c.

Lamb. 111.

And if the Justice of Peace shall not return the *Supplicavit*, nor Certificate of his Doings therein, until a *Certiorari* come to him for it, yet 'tis no Danger to him.

Also if the *Supplicavit* be against divers, and the Demandant will release his Prayer of the Peace against one of them, then that release ought § 13. Release.

ought to be certified for him, and the Writ must be served and executed for the rest: Or else *Non est inventus* may be certified for him, and the Writ executed for the rest.

§ 14.
Peace and
Good Be-
haviour.

By the Book 30 *Affrayum plac.* 14. it appeareth, that a Man may be compelled to find Sureties both for the Good Behaviour, and for the Peace, for there one that had beaten a Woman in *Westminster-Hall*, was bound to the Peace towards the Woman, and was also bound to the Good Behaviour towards the King.

And so where one shall strike another in the Presence of a Justice of Peace, the Justice may bind him to the Peace, and also to the Good Behaviour. *Crompt.* 140.

So where one coming to the Sessions to prefer a Bill of Indictment, or about a Traverse to be tried there, &c. if he shall be assaulted or threatned, &c. the Justices may bind the Offender to the Peace, towards the Party, and to the Good Behaviour for such Contempt to the King and the Court. *Crompt.* 141.

And yet the Good Behaviour includeth the Peace, and he that is Br. Sure-bound to the Good Behaviour, is therein also bound to the Peace. See *ty 11.* the usual Forms of both Recognizances, & *hic postea.* *§ H. 7. 2. b.*

But if the Recognizance taken for the Good Behaviour, be only *good bene se gerat*, &c. *Quere* how far these Words will extend. See *2 H. 7. 2. b.* where the Justices held, That the Good Behaviour might be forfeited by the Number of his People, and by the Arms (or Weapons) and the like, although they break not the Peace. And they thought, that he who is bound to the Good Behaviour, ought to carry and demean himself well in his Carriage, and in his Company, not doing any Thing which shall be a Cause of Breach of the Peace, or to put the People in Fear or Trouble, and so shall be intended of all Things which concern the Peace, but not in Misdoin of other Things, which touch not the Peace. See *hic postea.*

C H A P. CXXIII. Vide LXXIV.

Surety for the Good Behaviour.

§ 15. *Natura* **T**his Surety for the Good Behaviour, is granted by the Justices of P. Jac. 18. Peace, as well by the Authority of the Commission of the Peace by Force of *Assignment*, as also by Force of the Statute 34 *Ed. 3. cap. 1.*

And this Surety is of great Affinity with that of the Peace, and is provided chiefly for the Preservation of the Peace (as that other is) as you may observe out of the usual Forms of the Recognizances; yea by some Opinions it differeth little or nothing from that of the Peace; but that there is more Difficulty in the Performance thereof; and the Party so bound, may sooner fall into the Danger of it, and of his Recognizance. For the Peace (say they) is not broken without an Affray committed, Battery, Assault, Imprisoning, or Extremity of Menacing; whereas the Good Behaviour may be broken, and the Party's Recognizance forfeited without any of these: As namely,

§ 16.
Recogni-
zance how
broken.

1. By the extraordinary Number of People attending upon the Party bound.

2. Or

2. Or by his wearing Arms, or other Weapons more than usually he hath done, or more than he meet for his Degree.

3. Or by using Words or Threatning, tending or inciting to the Breach of the Peace.

4. Or by doing any other Thing which shall tend to the Breach of the Peace, or to put the People in Fear, although there be no actual Breach of the Peace.

Yet note, These four last Matters, as they are the Breaches of the good Behaviour; so are they also cause to bind a Man to the Peace; yea, they are Breaches of the Peace, and a Forfeiture of the Recognizances of the Peace. *Vide Tit. Sureties for the Peace.*

The Book 2 *H. 7. fol. 2.* before recited, concludeth, That the Justices were not all certainly advised how those Words, *de se bene gerendo*, should be taken: Mr. *Br.* abridging thereof, *Tit. Surety* 12 saith, that it was holden, That he who is bound to the Peace, ought to demean himself well in his Port, (*sc.* Behaviour) and Company, not doing any Thing that may be the Cause of the Breach of the Peace, or to put the People in Fear or Trouble; yet the Book seems to mean this of the *Good Behaviour*. See *Fitz. Surety* 21.

§. 3.
Peace and
Good Be-
haviour,
how they
differ.

But though this extraordinary Number of Attendants, and wearing Arms, are Breaches as well of the Peace, as of the good Behaviour; yet the Good Behaviour doth include the Peace, and besides importeth some greater or other Matters of Misbehaviour, and for which the Surety of the Peace is not to be granted, (although they also are against the Peace and Quiet or good Government of the Land) and you shall find that this Surety of the *Good Behaviour* is grantable in divers other Cases, in which the *Surety of the Peace* is not grantable.

The Surety of the *Good Behaviour* is to be granted at the Suit of divers; and those being Men of Credit, and to provide for the Safety of many, whereas the *Surety of the Peace* is usually granted at the Request of one, and for the Preservation of the Peace chiefly towards one.

Also this Surety of Good Behaviour, is most commonly granted either in open Sessions of the Peace; or out of the Sessions, by two or three Justices of the Peace; whereas that of the Peace is usually granted by one Justice, and out of Sessions.

14H. 7. 8.
Lamb.
123.

And yet by the Words of the Commission, as also by the common Opinion of the learned, one Justice of Peace alone, and out of the Sessions may grant this Surety of the Good Behaviour (and that either by their own Discretion, or upon the Complaint of others) as they may that of the Peace.

But this is not usual, unless it be to prevent some great and sudden Danger; (especially against a Man that is of any good Estate, Carriage or Report.

Also this Surety may be granted at the Suit of some one Person.

But the more dangerous this Surety is to the Party bound, the more Regard there ought to be taken in granting it: And therefore, it shall be good Discretion in the Justices, that they do not grant it, but either upon sufficient Cause seen to themselves, or upon the Suit and Complaint of others, as aforesaid, and the same very honest and credible Persons.

Also this Surety of Good Behaviour, is often taken by the Justice of Peace, by Virtue of a special Writ in the Nature of a *Supplicavit*, directed out of the Chancery or King's Bench; and then the Ju-

§. 4.
By Sup-
plicavit.

Since of Peace upon such a Writ is to proceed as a Minister, (as in Case for the Peace, *mutatis mutandis*. See before Tit. *Sureties for the Peace*, and *Supplicavit*.)

I once received out of the Chancery such a Writ directed to the Justices of the Peace in the County of Cambridge, and to the Sheriff of the said County: And to every of them (and grounded upon the Stat. 34. *Edw. 3.*) commanding us and every of us, to take four Sureties (besides the Party) whereof every one should have Lands of such yearly Value, or Goods of such a Value, and to bind the Sureties every one in such a Sum, and the Party in such a Sum: That he shall be of Good Behaviour henceforwards towards us and all our People, and shall attempt nothing contrary to the said Statutes, &c. and therein I proceed as a Minister only.

The Party against whom such a *Supplicavit* for the Good Behaviour shall be granted, before he be attached thereupon, may go or send up, and give Surety above in the Chancery, &c. (as here before, for the Peace) and thereupon he shall have a *Superfedeas* out of the Court directed to the Justice of Peace and Sheriff, and to every of them, commanding them to surcease to arrest the said Party, or to do any Execution of the said Writ of *Supplicavit*, and that if (before the Coming of the said *Superfedeas*) they have taken any such Security for the Good Behaviour of the Party, that then they presently release such Surety found by him, the former Writ of *Supplicavit* notwithstanding.

CHAP. CXXIV. Vide LXXV.

For what Cause this Surety for the Good Behaviour shall be granted.

§. 1.
Where to
be granted.

1. It is chiefly to be granted (by the Justices of Peace out of their Sessions) in these Cases following, *viz.* First, against common Barreters, common Quarrellers, and common Breakers of the Peace. See what Barreters be, Tit. *Barreters*, before.

2. Also it is grantable against Rioters. See hereof before, Tit. *P. Just. 18. Riots*.

3. Also against such as shall lie in Wait to rob, or shall be suspected to lye in Wait to rob, or shall assault, or attempt to rob another, or shall put Passengers in Fear or Peril.

4. Also against such as be generally feared (or suspected to be Robbers) by the Highway.

5. Also against such as are like to commit Murder, Homicide, or other Grievances to any of the King's Subjects in their Bodies. Cro. 115. b.

6. Also against such as shall practise to poison another.

I lately granted the Good Behaviour against one, for that he had bought Ratsbane, and mingled the same with Corn, and then wilfully and maliciously did cast the same among his Neighbours Fowls, whereby most of them died; and it was holden to be a good Cause to bind the Offender over, by the whole Bench: And since I have known it allowed as a good Cause by the Judges of Assize.

7. The

7. The Justice of Peace also upon his own Discretion (and without Complaint) may bind to the *Good Behaviour* any other Person which in his Presence or Hearing shall misbehave himself in some outrageous Manner of Force or Fraud, and may commit such Person to the Gaol, if he refuse to be bound. *Sir Francis Bacon* 11.

P. Just. 18. It is also grantable against such as be of evil Name and Fame, generally, but more especially against such as are defamed or detected in any of these Particulars following:

13 H. 7. 10. 1. First, against those that are greatly defamed for resorting to Houses suspected to maintain Adultery, or Incontinency.

2. Also against the Maintainers of Houses commonly suspected to be Houses of common Bawdery.

Cromp. 140. One that had such lewd Women found in his House, was bound to his good Behaviour, (by *Wray, Anderson, and Manwood*) 28 El.

1 H. 7. 7. 3. Also against common Whore-mongers, and common Whores; 27 H. 8. 14. for Bawdery is an Offence temporal, as well as spiritual, and is against the Peace of the Land.

13 H. 7. 10. Upon Information given to a Constable, that a Man and a Woman Br. Trav. 432 be in Adultery or Fornication together (or that a Man and a Woman of evil Report, are gone to a suspected House together in the Night) the Officer may take Company with him; and if he find them so, he may carry them to Prison; or he may carry them before a Justice of Peace, to find Sureties for the Good Behaviour.

4. Also against *Night-walkers* that be suspected to be Pilferers, or otherwise like to disturb the Peace, or that be Persons of evil Behaviour, or of evil Fame or Report generally, or that shall keep Company with any such, or with any other suspicious Person in the Night.

13 H. 7. 10 & 13 E. 1. *Winch. cap. 4.*

Against such as by Night shall *coesdrop* Mens Houses.

Against *Night-walkers*, that shall cast Mens Gates or Carps, &c. into Ponds, &c. or shall commit other like Misdemeanors or Outrages in the Night Time.

5. Against suspected Persons who live idly, and yet fare well, or are well apparelled, having nothing whereon to live; (except upon Examination, they shall give a good Account of such their Living.)

6. Against common Haunters of Ale-Houses, or Taverns and common Gamesters; but more especially if they have not whereon to live.

7. Against common Drunkards; and yet by the Stat. 4 Jac. 5. such Offenders must be thereof lawfully convicted, *sc.* by the Presentment of the Offences at the Assizes, Quarter-Sessions of the Peace, or in the Court-Leet, and thereupon a due Proceeding to Conviction, by the Verdict of another Jury; or by the Confession of the Offender in Court.

But now by the Stat. 21 Jac. c. 7. any one Justice of Peace (or any head Officer in any City, &c. hath Power to convict any Person of Drunkenness, &c. See *hic antea* Tit. *Ale-houses*.)

And for the second Offence of Drunkenness, any one Justice of Peace may, upon his View, Confession of the Party, or Proof of one Witness upon Oath) as it seemeth, bind such Offender to the Good Behaviour. 21 Jac. cap. 7.

8. Against all such as use to go on Messuages of Thieves, see Stat.

12 E. 2. P. L. 1.

For all these former Offenders, and the like, are evil Members in the Commonwealth, and such their Demeanor and Living is greatly to be suspected, (and besides, do seem to be more properly said against the Peace of the Land, than *Country* in the Case before, 1 H. 7. 7.) and therefore it seemeth reasonable, just and expedient, that the Justices of Peace (upon their Discretion) should convene such Persons before them, and examine them and their Courses of Life; and if they cannot give a good Account of such their Courses, then to bind them to their *Good Behaviour*.

Also the Good Behaviour seemeth grantable, against such as shall make false Out-cries, or shall raise Hue-and-cries without Cause; for these are Disturbances of the Peace. *Crompt. 179.*

Hue-and-
cry.

If one Man do levy *Hue-and-cry* upon another without Cause, either of them may be attached (and bound over) as Disturbers of the Peace; *P. R. 156. 29 E. 3. Fitz Trespass 252. tamen quare*, concerning him upon whom the Hue-and-cry is levied: Except that he be either a Man of evil Fame, or that there be some Felony committed, &c.

Also it seemeth grantable against Cheaters and Couseners.

6. 2.
Libels.

Libellers also may be bound to their *Good Behaviour*, as Disturb- *P. R. 156.* ers of the Peace, whether they be the Contrivers, the Procurers, or the Publishers of the Libel: For such Libelling and Defamation tendeth to the raising Quarrels and Effusion of Blood, and are especial Means and Occasions tending, and inciting greatly to the Breach of the Peace.

Libellus, literally signifieth a little Book.

By Use it hath also two other Significations: First, it signifieth the original Declaration of any Action in the Civil Law.

Secondly, it signifieth a criminous Report of any Person, unlawfully published, and is called an infamous Libel.

Another describeth it thus, *Famosus libellus est qui impingit delictum aliquod notabile.*

This Libelling may be done after divers Manners.

1. By scandalous Writings, be it in Book, Ballad, Epigram, or *Co. 5. 125.* Rhyme, either in Metre or Prose.

2. By scandalous Words, Scoffs, Jests, Taunts or Songs, maliciously repeated or sung in the Presence of others.

3. By Pictures or Signs, as by hanging of Pictures of Reproach, or Signs or Tokens of Shame, or Disgrace near the Place where the Party thereby traduced doth most converse: As the Pictures of the Gallows, Pillory, Cucking-stool, Horns, or such like. *Co. 5 fol. 125.*

And in such Cases it is not material whether the Libel be true or false, or the Party thereby scandalized be living or dead, or be of good Name or evil.

And these Libellers, as also their Procurers, and the Publishers thereof, may be punished in other Manners.

1. Either they may be indicted for the same.

2. Or the Party grieved may have his Action upon the Case, and recover his Damages. *Lib. Intr. fol. 13. Mes cest sembler quand les parols sont actionables.*

If therefore any Man shall find a Libel, and would keep himself out of Danger; if it be made against a private Man, the Finder may either burn it, or else he must presently deliver the same to some Magistrate.

But if it concerns, or be made against a Magistrate, or other publick Person, the Finder ought presently to deliver the same to some Magistrate, to the Intent that by the Examination and Industry of such Magistrate, the Author may be found out.

Also this Surety of the *Good Behaviour*, is used to be granted against the putative Father of a Bastard-child. See Tit. *Bastardy*. §. 3. Cause.

It seemeth also grantable against unlawful Hunters in Parks, after their Examination taken. See before Tit. *Hunting*.

Also it shall be granted against him that shall abuse a Justice of Peace, Constable, or other Officer of the Peace in executing their Office.

A. assaulted a Constable in doing his Office, it is a good Cause to bind him to the Good Behaviour. *Fitz. Barr.* 202. *Crompt.* 135.

The Sheriff's Bailiff, upon a Warrant from the Sheriff (to make Execution of the Goods of *A.*) went into the House of *A.* finding the Doors open, and *A.* shut the Doors upon the Bailiff, and so detained him a Prisoner in his House, and Sir Robert Houghton, one of the Judges of the King's Bench, thought it a good Cause to grant out Process of the *Good Behaviour* against *A.* for thus abusing an Officer of the Law. *Anno 17 Jacobi Regis.*

9 E. 4. 3 A Justice of Peace seeth a Man break the Peace, (*sc.* make an Assault or Affray upon *A.*) and he chargeth him to keep the Peace, and the other answereth that he will not, the Justice may bind him to the *Good Behaviour*.

See Exod. 22, 23. For if (as one saith) Contempt, or Contumely, used to the Person of a Man's Better, neither Policy for Example, nor Religion for Peace, may tolerate, much less may any use Contempt towards, or abuse such as are in Authority, especially when they are executing their Office.

Nay, he who shall use Words of Contempt, or *contra bonos mores*, against a Justice of Peace, though it be not at such Time as he is executing his Office, yet he shall be bound to his Good Behaviour. See Exod. 22. 28.

But it was adjudged between *Dean* and *Garret*. *Tant El.* That *Good Behaviour* is not requirable for unseemly Words spoken of a Magistrate or Justice of Peace, when he is not in the Execution of his Office; and it was resolved in *Sir William Bruncker's Case* *B. R. P.* 23. *Car.* That a Justice of Peace cannot commit one, until he find Sureties for the *Good Behaviour*, unless the Party be thereof convicted, or at least indicted, and it seems reasonable so to do, unless for any Offence committed against a Justice of Peace personally: And so also it was adjudged *M. 29 El.* That to call a Mayor Fool, unless it be when he is in the Execution of his Office, is not Cause to imprison or bind to the *Good Behaviour*. *Mo. Rep. p. 247.*

Co. 11. 98. If a Citizen or Freeman of a Town Corporate, shall use Words of Contempt, or *contra bonos mores*, against the chief Officer of the City or Town, or his Brethren, they are good Causes to commit him to Prison, until he shall find Sureties for his Good Behaviour; for Obedience and Reverence ought to be yielded to the Magistrate, for that they derive their Authority from the King; and *obedientia est legis essentia*.

Also he that shall abuse a Justice of Peace his Warrant may be bound to the *Good Behaviour*. See after, Tit. *Warrants*.

A Man

A Man complaineth of a Riot, or forcible Entry, so that the Justices of Peace are assembled to enquire thereof; then the Party that complained will not prosecute the Matter; it seemeth that the said Justices of Peace may bind him to the Good Behaviour for thus deluding them.

And so of such as shall charge another with Felony before a Justice of Peace, and yet will not give Evidence, &c. See before, *Tit. Felony*.

A. is bound to keep the Peace against B. only, and getteth a *Superfedeas*, and after B. releaseth him; after A. is arrested for Surety for the Peace at another Man's Suit, and sheweth his first *Superfedeas*, it seemeth he shall be bound to his Good Behaviour for this Deceit.

Yet, whatsoever Act or Thing is of it self a Misbehaviour, or is against the Good Behaviour, is Cause sufficient to bind such an Offender to the Good Behaviour: For the Magistrate ought to maintain all civil Authority.

§ 4. Also by the expresse Words of the Statutes, the Offenders hereunder named shall be bound to their Good Behaviour.

1. Disturbers of *Preachers*, 1 M. 3. P. 1.
2. Destroyers of *Fish-Ponds*, &c. or *Stealers of Fish*, after lawful Conviction, &c. *Eliz.* 21. P. *Fish* 7.
3. Takers of *Hawks* or *Hawks-Eggs*, out of other Mens Ground, after lawful Conviction, &c. P. *Hawks* 1.
4. Unlawful Stealers, Hunters, or Killers of any *Deer or Conies* in the Night or Day-Time, in any Park or Warren, after lawful Conviction, &c. See the Stat. 5 *Eliz.* cap. 21.

But all these former Offenders must be bound at the Sessions:

5. *Popish Recusants*, absenting themselves from Church twelve Months, shall be bound in the King's Bench. 23 *El.* 1. P. *Recusants* 1.
6. He that is *attainted of Felony*, and hath a Pardon for the same, shall within three Months find Sureties for his Good Behaviour; but he shall be bound before the Sheriff and Coroners, who shall return the same into the Chancery.

Also he that is *acquitted of Felony*, if he be of evil Fame, or of evil Behaviour, the Justices of Peace upon their Discretion, may bind him to his Good Behaviour. *Crompt.* 135.

7. Such Persons as shall disturb the Execution of the Stat. 39 *Eliz.* 39 *Eliz.* 4. concerning the punishing, or conveying of *Rogues*; any two Justices of Peace may bind them to their Good Behaviour. See before, *Tit. Rogues*.

8. So of such as shall disturb the Execution of the Statute for the Relief, Setting on work, or *Settling the Poor*. See before *Tit. Poor*.

9. The Mother of a *Bastard-Child* (which may be chargeable to the Parish) for her second Offence shall be committed to the House of Correction, there to remain, until she can put in Security for her Good Behaviour, &c. See before, *Tit. Bastardy*.

10. Such as have their Houses infected, or be themselves infected with the Plague, and being commanded to keep their Houses, shall disobey, &c. they shall be bound to their Good Behaviour for one whole Year. See before, *Tit. Plague*.

§ 5. What Act shall be a Forfeiture of the Recognizance taken for the Good Behaviour, see here before.

Also the Party bound to his Good Behaviour for offending against any of the Statutes here before mentioned, if he shall afterwards offend

offend against any the said Statutes, he shall thereby forfeit such his Recognizance.

To be drunken is a Breach of the Good Behaviour, as Sir Nicholas Hyde did deliver it in his Charge at Cambridge, Lent Assize, Anno tertio Caroli Regis.

“ One bound to the Good Behaviour at the Prosecution of Stamp, Words.

“ and he said to him, *Thou art a quarrelsome Fellow, and a sower*

“ *Knave*; and adjudged these Words were no Breach of the Recogni-

“ zance; but to speak such Words to an Officer in the Execution of

“ his Office, is a Breach of the Good Behaviour, for it may be an Im-

“ pediment and a Disgrace to him in the Execution of his Office.

“ And to say of a Merchant that he is a Bankrupt, is no Breach of

“ such a Recognizance. So one said of a Mayor playing at Tables,

“ *he is a Fool*, this is no Cause to imprison a Man; but if he were

“ in the Execution of his Office, it is otherwise. Stamp's Case H. 10

“ Jac. B. R. Roll. Rep. part 2. p. 272. & fo. 200.

Moor's
Rep. p.
249.

“ A Trespass done, and Indictment and Conviction for the same,

“ *quod vi & armis clausum fregit & overium cepit & abdidit & ad-*

“ *huc detinet*, is not a Breach of the Good Behaviour: So likewise,

“ for saying of another he is a Lyer, a Drunkard, and I will make

“ him a poor Rogue, for they are not Words which menace Battery,

“ and he ought to do such Acts as imports an Intention to do Violence

“ to his Body; as to say, I will meet with thee.

The Form of a Warrant for the Good Behaviour *vide postea* *ri-*

tulo Warrants.

The Form of the Recognizance for the Good Behaviour *see in-*

ter, Tit. Recognizance.

Lamb.
116.

Whether the Surety of the Good Behaviour (taken upon Complaint)

may be released by any special Person, some do doubt, because it

seemeth more popular than the Surety of Peace; yet others do hold,

that it may be released, either by the Justice of Peace himself that

took it, in Discretion, or by the Party upon whose Complaint it was

granted, even as that for the Peace may.

P. R. 12.

It seemeth also a Superseas of the Good Behaviour may be grant-

ed by the Justices of the Peace (as well as for the Peace, *mutatis mu-*

tandis) upon good Sureties taken by the said Justices, of the Party, to

be of the Good Behaviour.

Crompt.
237.
Crompt.
146.

If a Man be bound to the Good Behaviour (before the Justice of

Peace) and to appear at the next Assizes or Sessions, yet the Party

bound, may by a *Certiorari* remove the Recognizance into the Chan-

cery or King's Bench before the Day, and then he shall not need to ap-

pear at the Assizes or Sessions; for they shall have no Record, where-

upon he may be called there.

§. 6.
Release

§. 7.
Superseas

§. 8.
Certiorari

C H A P. CXXV. Vide LXXVI

Forcible Entry and Forcible Detainer.

Lamb.
138.
Crom. 76.

THE Common Law being the Preserver of the common Peace of the Land, hath always abhorred Force, Co. 3. 12, and yet before the Reign of King Richard the Second, any Man might have entered into Lands and Tenements with Force and Arms, and also to have kept and detained them with Force, where his Entry was lawful.

§. 1.
Common
Law.

And at this Day, if a Man doth enter into any Lands or Tenements with Force, or Multitude of People, where his Entry is lawful, he is not punishable by Action, either at the Common Law, nor by Action upon any Statute; for where the Title of the Plaintiff is not good, there he hath no Cause of Action, although the Defendant doth enter with Force: But in such Case he that entred with Force, must be indicted upon the Statute; or otherwise Complaint may be made thereof to the Justices of Peace; and as well upon such Indictment, as upon such Complaint, the Offender shall be punished; yet the Party (*ousted*) shall not be restored without Indictment, and the Force thereby found. *Vide antea, Tit. Forcible Entry.* 15 H. 7. 17. Br. For. 11.

§ 2. And for the better Restraining of such Force and forcible Entries into Lands and Tenements, and to inflict Punishment upon the Offenders therein, it was first provided by the Statute 5 Rich. 2. That no Man should enter into Lands or Tenements with Force, tho' he had good Right or Title to enter, but should enter only in peaceable and lawful Manner. See *Pl. 86. b.* 5 R. 2. c. 7. Regi. 182.

But this Statute provided no speedy Remedy, or extended to holding with Force, nor gave any special Power therein to the Justices of Peace, but upon a general Enquiry, in a general Sessions of the Peace, (and not otherwise) and therefore by another Statute made 15 Rich. 2. It was further provided, that if any Man should detain (or hold) with Force, after such forcible Entry made, upon Complaint thereof made to any Justice of Peace, he shall presently take and come with the Power of the County, and shall go and view the same, &c. and if he do find any holding the same forcibly, that then they should be imprisoned in the Gaol by the same Justice, as convict, by the Record of the same Justice; "there to remain until they have made Fine and Ransom to the King." 15 R. 2. c.

Yet neither of the former Statutes extended to those that entered peaceably, and then held with Force, nor yet doth give any Remedy, if the Parties who made the Entry with Force, and removed before the Coming of the Justice of Peace, nor yet ordained any Pain against the Sheriff, if he did not obey the Precepts of the said Justices, to execute the said Statute, when the said Justices would inquire of the same. And therefore the Stat. of 8 H. 6. doth give Remedy, first where any Man shall enter with Force, or shall enter peaceably, and after detain, hold or keep Possession by Force. Also these two last Stat. of 15 R. 2. and 8 H. 6. do enable any one Justice of Peace to give present Remedy, viz. to remove the Force, and commit the Offenders, in Cases of forcible Entry, or holding against the aforesaid Stat. 8 H. 6. c. 9.

And the said Stat. of 8 H. 6. extendeth further, reaching the Offenders, if they were removed or gone before the Coming of the Justices; giving an Inquiry, and Restitution, and also punishing the Sheriff that shall not obey the Precepts of the Justice in this Behalf.

So that these Statutes do now give full Remedy, and do prohibit, and are made against these Degrees or Sorts of Force, viz. against,

1. Such as enter peaceably, and then hold forcibly.
2. Such as enter with Force, and then hold peaceably.
3. Such as do both enter forcibly, and hold forcibly.

I have (here before) already shewed in some Measure how the Justice of Peace shall demean himself in the Execution of these Statutes;

now

Fitz. 248.
c.
Lamb.
143.

now I will proceed to give him some further Light in this Business, in these Particulars following.

1. First, what is a Forcible Entry, and what is a Forcible Holding within the Meaning of these Statutes.
2. Who may commit a Forcible Entry, &c. and upon whom.
3. Where a Force, or Forcible Holding, is justifiable, or lawful.
4. What and how many several Remedies the Party hath, that is so put out, or kept out of his Possessions.
5. The Manner of Proceeding of the Justice of Peace by Inquiry.
6. Of Restitution to be made to the Party so put out, by whom and to whom.
7. What Causes there may be for staying the Justice of Peace from making Restitution.

C H A P. CXXVI. *Vide* LXXVII.

What is a Forcible Entry, or Holding within these Statutes.

Force, in the Common Law, is most usually applied to the evil Part, and signifieth unlawful Violence used either to Things or Persons. *Co. L. 161. b.* §. 1.

Our Law taketh Knowledge of two Manners of Force; the one may be termed a Force in Judgment of Law, which accounteth every private Trespass to be a Force; so as if I do but pass over another Man's Ground without Licence, he may have his Action of Trespass against me, why or wherefore with Force and Arms, &c. See *Co. L. 257.*

The other Manner of Force is more apparent, and always carrieth some fearful shew and Matter of Terror with it.

This last Sort of Force is that which is prohibited by these Statutes; and therefore Note, that every Force punishable by these Statutes, must have one of these Badges, *sc.* it must be either *Manu forti*, with Force or strong Hand, or *Multitudine*, with Multitude of People. *Lamb. 145. and 5 R. 2. c. 7.*

Manu forti, *viz.* either with apparent Violence (in Deed, or in Word) offered to the Person of another, as threatening Speeches, turbulent Behaviour, or Violence, or else that they be furnished with offensive Weapons (by them not usually born) whether they offer Violence or Fear of Hurt to any other there or no, and this may be done by one Person only.

Multitudine, *sc.* with Company more than usually they have attending them, *10 H. 7. 12.* Now the Law calleth a Multitude when there be ten or more in one Company; *Multitudinem decem faciunt.*

And yet Sir Edward Coke upon *Littleton 257*, saith, that he never read it restrained by the Common Law to any certain Number, but left to the Discretion of the Judges, or Justices.

If therefore one or more Persons shall come weaponed (especially with Weapons not usually born) to a House or Land, and shall violently enter thereinto, this is a forcible Entry, within the Meaning of these Statutes. *Forcible Entry.*

Lamb.
146.

H h h

Much

Much more, if (being so entred) he or they shall there offer Violence, or Fear of Harm to the Person of any that is in Possession thereof; most of all, if he or they shall forcibly and furiously expel and drive another out of his Possession.

So it is, if one shall enter peaceably, (the Door being open, or only latched,) and after he is in the House, he shall forcibly put another out of his Possession.

So it is, if he or they who shall enter peaceably, shall after their Entry offer apparent Violence, Threatnings, or Fear of Harm to the Person of any that is in Possession, to the Intent to get him out, and to make him leave the Possession, though they do not put him out, much more if they get Possession thereby.

If he or they that have entred peaceably, shall after use Words to any in Possession to this Effect, as to say, they will hold it or keep it, though they dye for it, or in Spite of the other, or such like, or other threatening Words; this maketh it a Forcible Entry.

So it is, if divers Persons shall come with Weapons (not usually born by them) to an House that is open, or to Ground, and shall there enter peaceably without any Disturbance; yet this is a Forcible Entry, for it shall be intended, that they would have used Force, if they had been resisted. Lamb. 146. Cromp. 99.

So it is, when the Master entred into an House, or Land, being attended with a greater number of Servants than usually do wait on him.

Note, that though a Man do actually use no Force in his Entry, yet if he do come so appointed either with Weapon or Company, that other Men may be reasonably affraid that he meaneth to make his way by Force, rather than he will fail of his Purpose, it seemeth to be a Forcible Entry. Co. L. 257. 10 H. 7. 12. Br. For. 30. Lamb. 146.

And if three or more, shall enter peaceably, (upon another being in Possession) and shall continue there peaceably, though this be no Forcible Entry or Detainer, yet may prove a Riot in regard of the Number.

Force twofold. Now there are two Sorts of Forces, as is aforesaid, *sc.*

1. An actual Force; as with Weapons or Number of Persons, &c. not usual.

2. A Force implied in Law; as every Disseisin, Rescous and Trespass implieth a Force, and is with Force and Arms. *Co. L. 157.*

Trespass. Also every Entry into another Man's House or Ground which is made with Force (*sc. manu forti* or *cum multitud.* either with apparent Violence offered to the Person of any other, or furnished with Weapons or Company, which may offer Fear) though it be but to cut or take away another Man's Corn, Grass, or other Goods, or to fell or crop Wood, or do any other like Trespass, though he do not put the Party out of his Possession, yet this is a Forcible Entry, and an actual Force punishable by these Statutes. See *Lamb. 145.*

Breaking into an House, tho' no Person is in it, this is a Forcible Entry; but not if the Door had been opened with a Key. *2 Roll. 2.*

'Tis Force to put back a Bolt, or drawing the Latch. *Ibid.*

But if the Entry were peaceable, and they cut or take away any other Man's Corn, Grass, Wood, or other Goods without apparent Violence or Force, though such Acts are counted a Disseisin with Force, yet they are not punishable by these Statutes, *sc.* the Justices of Peace are not to remove, imprison, or fine such Offenders. Lamb. 145.

Cromp. 76. 11 H. 4. 16. Also, if one or more shall enter into another Man's House or Land peaceably, and there shall by Force or Violence, cut or take away any Corn, Grass, or Wood, &c. or shall forcibly or wrongfully carry away any other Goods there being; this seemeth to be a forcible Entry, punishable by these Statutes.

20 H. 6. 11. So it is, if a Man shall distrain with Force for a Rent (be it due or not due) this doth countervail any Entry with Force. Lamb. 147.

Br. Forc. 1.

And in these Cases of Trespass only, the Justice of Peace (upon Complaint to him made) may remove such Force; and upon View thereof, may imprison and fine such Offenders. §. 2. By Words

If a Disseisor hath entered peaceably, and shall presently threaten to kill the Disseisee (if he re-enter) this seemeth a Forcible Entry, in the Disseisor.

2 H. 7. 16. But Note, that a Forcible Entry cannot be without an actual Entry, for the Words of the Statute be, *whosoever doth enter*, &c.

Br. For. 25. Cromp. 70. Note also, if one that hath Right to enter upon Land, shall go with divers in his Company, and with Weapons, over the Land whereto he hath Right to the Church, Market, or some other Place; this is no Entry with Force, except he shall express his Intent, that he doth enter there claiming the Land.

Note also, that if a Man shall enter with Force (into House or Land) although he obtained not the actual Possession thereby, yet shall be imprisoned and fined for the only entering with Force; but Restitution is not to be made, but only where there is a Forcible Putting out, or a Holding another out of his Possession, and found by a Jury.

If by fair Means, a Man (whose Entry is lawful) shall persuade or intice them which are within the House, to come out, and then the Door being open or latched only, he shall enter peaceably, without Multitude, offensive Weapons, or other Violence; this Entry is justifiable. Lawful

So it is, if he shall enter peaceably, and then by gentle Perswasions send them out that are within the House, and after shut the Door and keepeth them out; this is justifiable, so that afterwards he holdeth it not forcibly, nor useth Violence or threatening Speeches.

Lamb. 149. So it is, if I shall take a Man being out of his House, and then put or send into the House my Servant (or some other) in peaceable Manner, and do hold away the other by Imprisonment of his Person; this is no Forcible Entry nor Detainer within these Statutes, but a false Imprisonment, punishable by Action only.

So it is, if he whose Entry is lawful, shall enter peaceably into his House (the Doors being open or latched only) and being so entered, shall continue and abide there peaceably; this is justifiable. And if they which were before in Possession, shall put him out forcibly, this is a Forcible Detainer of their Parts.

Forcible Detainer is a violent Act of Resistance by strong Hand of Men weaponed with Arms, or other Account of Fear in the same Place, or elsewhere, by which the lawful Entry of the Justices, or any other is barred or hindred. §. 4. Forcible Detainer.

Forcible
Detainer.

And a Forcible Detainer must be understood of a forcible With-^{Lamb.} holding the Possession of Lands or Tenements, and not of the Person^{149.} of a Man, as before.

Note also, though the Entry were at the first peaceable and lawful,^{8 H. 6. c. 9.} yet if there be after a Holding by Force, it is punishable by the Sta-^{P. Forc. 4.} tute, except where there was at the first a lawful and peaceable Entry, and thereupon a lawful Possession, peaceably continued by the Space of three Years together without Interruption: For there a Man may^{Lamb.} hold and keep such Possession with Force against all others (saving a-^{164.} gainst the King's Officers).

If the Justice of Peace shall come to the House or Place that is sup-^{Lamb.} posed to be holden with Force, and there shall find the Doors or^{148.} Gates shut, and he or they within shall deny, or will not suffer him^{P. R. 4. 1.} to enter, this is a Forcible Holding and Detainer, though there be no^{Cromp.} Weapons shewed or used, and though there be but one Person in the^{70.} House, or upon the Ground.

So it is, if when the Justice of Peace entreth the House or Ground,^{Ibid.} he shall find there any Persons armed, or having Armour or other Weapons (not usually born by them) lying ready by them. This is Forcible Detainer.

So it is, if the Justice of Peace shall find in the House any great^{Ibid.} Number of People, other than the ordinary Family or Company.

Also, if a Man shall enter peaceably into a House, and after shall^{P. R. 41.} bring into the same more Weapons than he and his ordinary Family do usually wear, or shall make any Use of such Weapons as he doth find in the House, to defend his Possession therewith. These are Forcible Detainers within these Statutes.

If a Man that hath peaceably entred into an House, and will place^{Ibid.} Men with Force, (so with Guns or other Weapons) in some other House or Place not far distant, to the Intent that they may be ready to assault such as shall enter upon him. This is a Detainer with Force.

So it is, if the Disseisor of an House or Land, shall forestal the Way^{Lamb.} of the Disseisee, with Force and Arms, so that the Disseisee dareth^{149.} not enter, or come near thereto for Fear of Death, &c.^{Cromp. 69.}

So if a Man shall distrain for a Rent-Service, or a Rent-Charge, and a Rescous shall be made unto him. This is a Disseisin with Force. *Co. L. 161. b.*

So it is, if a Man shall keep his Cattle in another Man's Ground^{P. R. 39.} by Force, claiming Common there, where he hath no Common. And in this Case, the Justice of Peace upon Complaint to him made, may remove this Force; and upon View thereof, may record it, and commit such Offenders to Prison, and may fine them, but cannot award Restitution.

Also there may be a Forcible Detaining the Possession by Word only without any forcible Act.

§. 4.
By Words.

As if *A.* hath wrongfully, though peaceably entred into the House,^{Lamb.} or upon the Land of *B.* and hath put out *B.* and shall presently^{149.} threaten or say to *B.* That if he do come thither again to enter, he^{Cromp. 70.} will kill him. This seemeth a Forcible Entry by *A.* And if *B.* shall^{P. R. 39.} afterwards come again to make his Entry, and then *A.* shall threaten to kill him. If he entreth there this is a Forcible Detainer in *A.*

I.

And

And to threaten to maim, beat or to do other bodily Hurt to *B.* in the Case aforesaid, amounteth to a Forcible Entry or Detainer, for that Death may insue upon such Beating or Hurt. See 39 *H. 6.* 50. 7 *E. 4.* 21. But to threaten to burn the House, or to spoil his Goods therein (if *B.* shall come thither, to enter again). This seemeth not to amount to any such Matter, for that *B.* may afterwards have his Action for the Burning of his House, or Spoiling of his Goods, and shall thereby recover Damages, to the Value thereof, &c.

Also when *B.* shall come to make his Entry as aforesaid, if *A.* shall say to him, that he will not open the Door. This is no Forcible Detainer.

So it is if *A.* be in Possession of an House, or hath a Lease thereof at the Will of *B.* and after *B.* entreth into the House, and commandeth *A.* to go out, and leave him in the Possession, and *A.* will not go out, this is no Force; for refusing or denying only to go out, is no Force, unless there be withal some forcible Act or threatening Speeches. *Ubi factum nullum, ibi fortia nulla.* Where there is no Fact, there is no Force. Co. 4. 43.

A. mortgageth his House to *B.* upon Condition, That if *A.* shall pay to *B.* such a Day 40*l.* then the said Mortgage and Feoffment to be void, and by Agreement of them both, *A.* the Mortgagor continueth the Possession, until the Day of Redemption, at which Day *A.* payeth not the 40*l.* and after *B.* cometh to re-enter, and *A.* keepeth the Possession by Force. This is a Detainer by Force in *A.* This was Mr. Richard Godfrey's Opinion between *Willows* and *Turget*.

The Disseisor maketh a Gift in Tail to *B.* who keepeth the Land with Force, at the Time when the Disseisee maketh his Claim, which Claim is made within the View so near as he dareth, for fear of Death, Battery, or other bodily Hurt, if *B.* after such Claim shall continue the Possession with Force, he may be thereof indicted, &c. for this amounteth to a new Entry, and a Detainer with Force by *B.*

And note, that whosoever an Entry is lawful, if the Possession be detained, or holden from me by Force, I may pray the Aid of the Justices of Peace to remove such Force as it seemeth.

If a Man hath a Rent or Common of Pasture out of another Man's Land, and coming to distrain for his Rent, or to use his Common, and is so forcibly resisted by the Tenant of the Land, that he cannot, or dareth not, either distrain for his Rent, or take the Benefit of his Common; this is a Holding with Force in the Tenant, and punishable by these Statutes.

So it is, if the Tenant of the Land shall forestal the Way with Force and Arms, or shall threaten him (who hath the Rent or Common) so that he dareth not come to distrain for his Rent, or to take his Common.

So it is, if a Man shall distrain for his Rent, and the Tenant of the Land shall make Rescous with Force and Arms.

And in these Cases of a Rent or Common, the Justice of Peace upon Complaint to him made, may remove such Force, and upon View may record it, and may therefore imprison and fine such Offenders, but cannot award Restitution, &c. Cannot restore the Party to his Rent or Common, which are to be taken, and used in another Man's Land, for Restitution is not to be made, but only of House or Land, as you may see hereafter.

§ 6.
The Per-
sons.

One Person alone may commit or make a Forcible Entry or De-^{Lamb.}
tainer, if he do it with offensive Weapons, not usually born, or do use¹⁷⁴
turbulent Behaviour, Violence or Threats, &c. to the Affray or Ter-^{Co. L. 257.}
ror of others; or do refuse to suffer the Justice of Peace to enter.

Who may
be guilty
of it.

An Infant of the Age of eighteen Years, by his own Act may com-^{Cromp.}
mit a Forcible Entry or Detainer; and so he may, though he be under^{69.}
eighteen, if he be of the Age of Discretion, (*sc.* of the Age of fourteen
Years). See *Perk. f. 10. b.* And the Justices may fine him therefore.
But yet it shall be good Discretion in the Justice of Peace to forbear
the Imprisonment of such Infants. See *Br. Imp. 43, 45, 75, 101. &*
hic post. tit. Imprisonment.

For an Infant shall suffer no Imprisonment or corporal Pain for any
Offence by him committed against any Statute, wherein an Infant is
not expressly named.

But yet he may forfeit the Penalty of a Penal Statute, and so by a
Penal Statute may forfeit and lose his Goods, if he be of the Years of
Discretion. See *Doff. & Stud. 147, 148.*

Infant.

And an Infant of the Age of eighteen Years, may be a Disseisor
with Force, and may be imprisoned for the same. *22 Edw. 4. Old*
Nat. Br. 128.

That Infants may be imprisoned by express Words in some Statute.
See *hic, cap. 45.*

But if an Infant commandeth another to enter, or hold with Force
to his Use, which is done accordingly; yet the Infant shall not be pun-
ished for such Offence, for the Commandment therein was void.

Feme Co-
vert.

Also a *Feme Covert*, (by her own Act) may commit a Forcible En-^{Cromp.}
try or Detainer; and upon the Justice's View of the Force, she shall^{69.}
be imprisoned therefore, (and she may be fined in such Case): But such^{16 Aff. 7.}
Fine set upon the Wife, shall not be levied upon the Husband; for^{Br. Impr.}
the Husband shall never be charged for the Act or Default of his^{45, 53.}
Wife, but when he is made a Party to the Action, and Judgment gi-^{See more}
ven against him and his Wife. *Co. 9. 72. and Co. 11. 61.* And if up-^{after in the}
on the Trial it be found to be her only Act, she only shall be taken^{Tit. Riot.}
and imprisoned.

Divers do enter with Force to the Use of *A.* who is not then present^{2 H. 7. 19.}
with him, but doth after agree thereto: This Agreement after maketh^{Br. Force}
A. to be a Disseisor, but not to be punished for the Force. *Quare*, if^{25.}
A. had counselled, consented or agreed thereto before the Entry. It
seemeth, that a Commandment, Consent or Agreement before or af-
ter, though it may make one a Disseisor; yet it is not to be punished
by the Justice of Peace upon these Statutes, for that a Forcible Entry
cannot be adjudged against a Man, without an actual Entry be also
made by him, or he at least present.

§ 7.
Consent.

But if *A.* that shall command or counsel others thereto, shall also
be present at the Time of the Entry, although he doth then nothing,
yet he is now become a Principal, and punishable by these Statutes.
Vide 17 Aff. pl. 14.

If divers do come in one Company, to enter into Lands, &c. where^{Co. 9. 67.}
their Entry is not lawful, and all of them but one did enter, and de-^{112, &}
mean themselves in peaceable Manner, and one only doth enter with^{115.}
Force, or (after Entry made) doth use Force and Violence, This shall^{See thereof}
be adjudged a Forcible Entry in them all (though the Force were a-^{after in}
gainst their Will;) for where divers come in one Company to any^{Tit. Mur-}
Place, to the Intent to do any unlawful Thing, be it Robbery, Homi-^{ther.}
cide, ^{Fitz. Co-}
^{ron. 314,}
^{350.}

cide, Riot, Affray, or any Trespass, here the Act of one of them shall be adjudged the Act of all that are present, and every of them shall be adjudged a principal Doer, altho' they stand by and do nothing. So, though some of them came without any Intent of Evil, if they came together in Company with the other Offenders, or if they came after; yet if they be either aiding or countenancing the Offenders, they shall be also adjudged principal Doers, as well as the other. And yet *Finch* Chief Justice, 2 *H. 8.* made a Difference where their Intent at the first was to do an unlawful Act, and where not. *Cro. 161.* See *Co. L. 157.*

Co. 1. 69. & 10. 112. An Indictment upon the Statute of 8 *H. 6.* for the King, is not good; for the King cannot be disseised, nor put out of his Freehold; neither can the King bring any Action upon the Statute of 8 *H. 6.* nor any other Action which might prove him out of Possession of the Land. *P. R. 39. b.* *The King's Termor*

Crompt. 46. And if the King's Termor be put out by Force, he cannot prefer a Bill of Indictment (upon the Statute of 8 *H. 6.*) that he was put out, and the King disseised: But he must have an Information of Intrusion in the *Exchequer*.

Yet upon Complaint made to the Justice of Peace by the King's Termor, of any such Force, the Justice of Peace, may, nay ought to remove the Force, and upon his View thereof to record it, and to commit the Offenders to Prison, and may fine them; and after such Force removed, the King's Termor may presently re-enter (if he can) in peaceable Manner. *The King's Tenant.*

If a Forcible Entry or Detainer shall be made upon any Lessee for Years, Tenant at Will, or upon a Copyholder, whether it be by a Stranger, or by the Lessor, or by the Lord, the Justices of Peace upon their View thereof, are to remove such Force, and may commit to the Prison the Parties which made such Entry, or which shall hold it with Force, and may fine them: But whether the Justice of Peace might make Restitution, and set them (*sc.* The Lessee for Years, Tenant at Will, or Copyholder) into their Possessions again, hath been much questioned. *Lessee for Years. Copyholder.*

Lamb. 149. Some hold Opinion, That the Justices of Peace might put them in Possession again; and of this Opinion was Mr. *Marrow* and Mr. *Lambert*; and to maintain this Opinion, these Reasons may be given. *§. 8. Restitution upon View.*

First, for that the Words of the old Statutes warrant it; for the Statute of 15 *R. 2.* in the Preamble thereof, as also the Statute of 8 *H. 6.* in the Body thereof, hath this Word [*Possessions*] which Word most properly doth extend to a Lease for Years, &c.

Again, that Clause of the Statute 8 *H. 6.* which provideth the Restitution, is thus: If it be found that any doth contrary to this Statute, then the said Justices, &c. shall put the Party so put out in full Possession, &c.

Now it cannot be denied, but that he which by Force expulseth Lessee for Years, Tenant at Will, or a Copyholder, doth contrary to this Statute; also they be the Parties put out.

Again, the same Mischief and Inconvenience which these Laws do labour to remove, is to Lessee for Years, Tenant at Will, and to the Copyholder.

Co. 11. 33. 34. Plow. 178. And we may find it usual, that where Statutes are made for to remedy any common Mischief, there to help Things in the same Degree, one Action, Thing, Place and Person, hath in Construction been taken for

for another: And a good Expounder, saith Sir *Edw. Co.* 11. 34. maketh every Sentence to have his Operation to suppress all the Mischief before the said A^c, and principally those that are specified in the A^c.

And again, saith he, It is the Office of the Judges always to make such Construction of Statutes as may repress the Mischief, and advance the Remedy, and to suppress all Evasions which may continue the Mischief, and to add Force and Life to the Cure and Remedy, according to the true Intent of the Makers of the Statute. *Co.* 11. 73. b. and *Co.* 3. 7.

Restitution Others hold the contrary, *sc.* That Lessee for Years, nor Copyholder, or Tenant at Will, could not have Restitution by the Hands of the Justice of Peace; and this seemed to be the common Opinion. Their Reason was,

For that the Words in the Statute of 8 H. 6. (in that Clause which specially provideth the Restitution) are thus. The said Justices, &c. shall relesse the Lands or Tenements, and thereof shall put the Party in full Possession, &c. Which Words [*Lands or Tenements*] are only to be understood of them that have Inheritance, or a Freehold at the least. But to this it may be answered, That the said Statute of 8 H. 6. (in the Body thereof) hath these Words, *Where any do make any Forcible Entry into Lands, Tenements or other Possessions, or them hold Forcibly, &c.* Which Words [*Possessions*] extendeth to a Lease for Years, &c. And then the Word [*Possessions*] being in the same Statute, we shall find that a Statute is to be expounded upon all the Parts thereof together, and not upon one Part alone by it self. To which Purpose, see *Lincoln College's Case*, and Doctor *Bonham's Case* in Sir *Edw. Coke's Reports*. *Raft.* 174.

But it seemeth to those which held this last Opinion, That if a Lessee for Years, Tenant at Will, or a Copyholder, be forcibly put out, or held out by any Stranger, if they will have Restitution, their Indictment must be made and preferred in the Lessor or Lord's Name; and the Jury must find that the Lessor or Lord of such Copyhold is disseised, and the Lessee or Copyholder is put out with Force. And hereupon the Lessor or Lord shall have Restitution; and so by their Restitution, their Lessee or Copyholder is restored also: But such Lessee or Copyholder cannot (say they) prefer an Indictment in their own Name, upon the Statute 8 H. 6. for that they have no Freehold. *Co.* 3. 59. b. & 3. 116. *Crompt.* 161.

Indictment And to that Purpose I find some Precedents of Indictments in this Form, That is to say, into one Messuage at, &c. then being the Freehold of *M. D.* Esq; with Force and Arms, &c. with strong Hand, and unlawfully upon the Possession of *J. L.* then Farmer of the said *M. D.* the said Messuage did enter, and him the said *J. L.* with Force and Arms, and strong Hand, and unlawfully then did from thence expel and put out, and the said *M. D.* thereof unjustly disseise, &c. See after Tit. *Precedents*. *Cro.* 249.

Also by this Opinion, if a Lessee for Years, Tenant at Will, or a Copyholder, be forcibly put out by their Lessor or Lord, such Lessee or Copyholder, hath no Remedy at all by Indictment upon this Statute, for they have no Freehold, and therefore can have no Restitution upon this Statute.

Also by this Opinion, if the Lessee for Years be put out by his Lessor, and after the Lessee putteth out the Lessor again forcibly, the Lessee shall not be indicted; neither shall the Lessor have Restitution upon this

this Statute, for that the Lessor is not disseised of his Freehold; for the Possession of the Lessee is such a Seisin of the Lessor, that he may have an Assize, if his Lessee be put out.

Crompt.
72.

And so of a Copyholder, not having forfeited his Estate, if his Lord notwithstanding shall enter upon him, and put him out, and the Copyholder shall re-enter upon his Lord with Force, the Copyholder shall not be indicted, nor yet the Lord restored, for the Reason aforesaid.

And so by this last Opinion, the very Mischief specified and intended to be helped by the Statutes, should still remain in all Cases between such Lessees and Copyholders, and their Lessors or Lords, so as there can be no Inquiry nor Restitution in Cases of Forcible Entry or Detainer between them.

Crompt.
71.

But howsoever the Law be taken for the Indictment or Restitution thereupon, yet in Case that Lessee for Years, Tenant at Will, or a Copyholder, be forcibly put out or held out, either by a Stranger, or by their Lessor or Lord, the Justice of Peace, or any one of them, by the Statute of 15 Rich. 2. cap. 2. might safely remove the Force, and upon View thereof commit the Offenders to Prison; and then the Lessee for Years or Copyholder, might presently re-enter, if peaceably they would, and so might have his Possession again, without any Restitution made him by the Justices.

A Copyholder may bring an Indictment of a Forcible Entry into his Copyhold upon the Statute 8 H. 6. cap. 9. but the Word *disseised* must not be in, and a Justice of Peace may remove the Force. *Poph. 205. Yelo. 81.*

But now by the said Statute made 21 Jac. c. 15. it is enacted, Such Justices or Justice of Peace, as by Reason of any Act of Parliament now in Force, are authorized upon Inquiry to give Restitution of Possession unto Tenants of any Estate of Freehold, of their Lands, Tenements, which shall be entred upon with Force, or from them withholden by Force, shall now have the like and same Authority (upon Indictment of such Forcible Entries, or Forcible With-holdings before them duly found) to give like Restitution of Possession unto Tenant for Term of Years, Tenants by Copy of Court-Roll, Guardians by Knights Service, Tenants by *Elegit*, Statute Merchant and Staple, of Lands or Tenements by them so holden, which shall be entred upon by Force, or holden from them by Force.

Now to shew something more, what the Law accounteth to be Force, and what Weapons be offensive, in these and the like Cases.

Co.L. 162.

Master *Bracton* saith, *Omnes illos dicimus armatos, qui habent cum quibus nocere possunt.* Which have any Thing about them, wherewithal they may strike or hurt.

And therefore to have Guns, Bows and Arrows, Cross-bows, Halberts, Javelins, Bills, Clubs, Pikes, Pitchforks or Swords not usually born by the Parties, shall be said to be *vis armata*.

Again, *Si quis venerit cum armis, & dejecerit, vis tamen armata dicitur, sufficit enim terror armorum.*

Ibid.

Si quis venerit sine armis, & in ipsa concertatione, ligna sumpserit, fustes aut lapides, vis dicitur armata.

And so to use casting Stones, hot Coals, scalding Water or Lead or any other Thing wherewith one may hurt the Person of another, shall be said to be *vis armata*, armed Force, or Force with Arms.

C H A P. CXXVII. *Vide* LXXVIII.*Lawful Force.*

§ 1. **W**here a Force or Forcible Defence is justifiable, and where not.

Force being opposed against the Law, is utterly forbidden; but being used in the Maintenance of the Law, and with the Warrant of Law, it is allowed, for that it maintaineth the Peace of the Realm: And therefore Force may lawfully be used by all the King's Officers, Ministers and Subjects thereunto deputed for the Execution or Advancement of Justice, or of the Judgments of the Law. P. R. 41.

And so first it is a lawful Force whereby all Offenders in Treason, Felony and other great Crimes, be pursued, apprehended, carried to Prison and receive their Punishments.

It is a lawful Force, whereby the Sheriff and his Officers do apprehend any Person by Virtue of the King's Writ.

It is a lawful Force, whereby Justices of Peace do remove unlawful Entries or Holdings of Possessions and repress Rioters, and do arrest and send to Prison such Offenders.

And in these and the like Cases, the King's Officers (*sc.* the Sheriff, Justice of Peace and Constable) may take the Help of others (what Number they shall think meet) to assist them, when need shall require. See hereof *postea in tit. Possessio Comitatus*. H. 7. Br. Riots 3.

Also it is a lawful Force, which Justices of Peace, Sheriffs, Coroners and Constables shall use in apprehending or committing to Prison such as within their several Jurisdictions, and in their Presence, shall in any Sort break, or attempt to disturb or break the Peace, and they may therein take the Assistance of others, as aforesaid.

Also in these Cases following, it is lawful for the King's Officers, by Force to break open a Man's House to arrest Offenders being therein, if the Doors shall be all shut, so as the Officer cannot otherwise enter the House, *viz.* P. R. 14.

§ 2. 1. For the Apprehending of any Person for Treason, Felony or Suspicion of Felony. Co. 5. 91. 13 E. 9. 4. *Br. Coron.* 159.

2. Where one hath dangerously wounded another, and then flying into an House, the Constable or other Officer upon fresh Suit, may break open the Door, and apprehend the Offender.

So may any other Person besides the Officer. 7 E. 3. 19. *Crompt.* 171.

3. Where there shall be an Affray made in an House, and the Doors shut, the Constable, &c. may break into the House to see the Peace kept.

4. So upon a Forcible Entry or Detainer found by Inquisition, before Justices of Peace, or viewed by the Justices themselves.

5. Upon a *Capias Vilagatum*, in any personal Action, as also upon a *Capias pro fine*, directed to the Sheriff, the Sheriff may break open the Doors, &c. 27 Aff. 35.

6. Upon a Warrant or Process, for the Apprehending of any Popish Recusant, being excommunicate, the Officer may break open the House. 3 Jac. 4. P. Rec. 52.

7. Upon

7. Upon a Warrant for the Peace, or Good Behaviour, the Constables may break open the House, by the Opinions of *Popham* and *Clerk*, Justices of Assize, at *Cambridge Assizes*, 3 *Jac.*

8. Lastly, in all Cases where the King is Party or hath Interest in the Business, the Officers may break open the Doors, as aforesaid: For no Man's House shall be a Castle against the King. *Co. 5. 91.*

Co. 5. 91. And yet the Sheriff, nor his Officers may not break open any Man's House, to execute the King's Process (upon the Body or Goods of any Person) at the Suit of any Subject. *Co. 5. 92. 95.*

But when a House is recovered by any real Action, or by *Ejectione firma*, there the Sheriff may break open the House, and deliver Seisin or Possession to the Demandant or Plaintiff, &c. For after Judgment, it is no more (in the Right or Judgment of Law) the House of the Tenant or Defendant. *Co. 5. 91.*

Co. 5. 91. But Note, that the Officer before he break open the House or Doors of any Person, he must signify the Cause of his Coming, and desire that the Doors may be opened unto him.

Co. 5. 91. Note also, although no Man may forcibly keep his House against the King's Officers in the Cases aforesaid, yet every Man's House is (to himself, his Family, and his Goods) as his Castle, as well for his Defence against Injury and Violence, as also for his Repose and Rest. And therefore the Law doth give to dwelling Houses divers Privileges. §. 3. Forcible Defence lawful.

1. First, That it is a Man's Castle for his Defence, as aforesaid.

2. Also a Man's House hath a Privilege to protect him against any Arrest by Force of any Process, at the Suit of any Subject, as aforesaid.

Co. 11. 8. 3. A Man's House (in some Cases) hath a Privilege against the King's Prerogative, for it hath been adjudged, that Saltpetre-men cannot dig in the Mansion-House of any Subject, without his Assent in Regard of the Danger that may happen thereby, in the Night-Time, to the Owner, his Family and Goods, by Thieves and other Malefactors. *Co. 11. 82.*

Co. 5. 91. 4. If Thieves shall come to a Man's House, to rob or murder him, & *18. 82.* he may lawfully assemble Company to defend his House by Force; and if he or any of his Company shall kill any of them in Defence of himself, his Family, his Goods or House, this is no Felony, neither shall they forfeit any Thing therefore.

Crom. 70. 5. Also a Man that is in Possession of a House peaceably, and doubteth that another (who indeed hath more Right to the Possession, and who may enter) will enter upon him, here he which is in Possession, may defend it with his ordinary Company, and may justify to beat the other, which shall attempt to enter upon him: But if he kill him, it is Felony, nay, he in Possession (in this former Case) may not hire any Strangers to aid him, neither may he have his own ordinary Company in Armour, nor otherwise be provided with Bows or Guns to shoot at the other. *Cromp. 70. a.* See after, *Tit. Homicide cap. 98.*

21 H. 7. 39 Also, if a Man being in his House, do hear that another will come thither to beat him, he may lawfully assemble his Neighbours and Friends, &c. to assist and aid him there in Defence of his Person. §. 4. In Defence of his Person.

Co. 11. 82. And yet if he, or any of his Company, shall kill the other (or any of the other Company) in such Defence of himself or his, this seemeth to be Felony in all of them which be in the House, and in that

Action; so as they shall forfeit their Goods thereby. See hereof after, Tit. *Homicide*.

But if a Man be threatned, that if he come to such a Place, that then he shall be beaten. In this Case he may not assemble any Company to go thither to safeguard his Person; for there is no Necessity of his going thither; besides, he may have Surety of the Peace against such as threatned him. ^{21 H. 7. 39. Co. 11. 81. & 5. 91.}

And if another shall make any Assault upon me, yet if I may escape with my Life, it is not lawful for me by Law to beat the other who made the Assault, *per Markham*; *Quod tota curia concessit.* ^{2 Hen. 4. fol. 7. Fitz. Bar. 72. Vide hic before Tit. Surety for the Peace, cap. 72.}

§. 5. If there be an Attempt made to beat a Man, his Wife, Father, ^{9 E. 4. 28. 16 E. 3. 17} Mother, or any of his Children (within Age), he may lawfully use Force to resist it, and may justify the Beating of the other in such Case. ^{In Defence of others.}

Also the Servant may justify to beat another in Defence of his Master. *Br. Trn's* 217. *hic cap. 72.* ^{21 H. 7. 39.}

But yet by the Opinion of *Eliot*, ^{21 H. 8. fol. 2. b.} it is not lawful forcibly to touch the Person of a Man, except that there be so great Peril, that another is like to perish, if he have not Help. And there I may beat one Man (saith he) to save the Life of another; so that where the Life of another is in Danger, there any Man (though a Stranger) may lawfully resist it, and that with Force and beating of the other. See *Chap. 72.*

§. 6. Also a Man may justify to beat another in Defence of the Possession of his Goods. And if another hath taken away my Goods, I may take them again from him by Force. But a Man cannot justify the Wounding of another in Defence of his Goods. And this was the Opinion of *Wray* Chief Justice, *An. 25 El.* ^{In Defence of my Goods. Crom. 65. 69. Crom. 92.}

And note, That every one may take and detain with Force his own Goods: And the Issue in an Action of Trespass brought therefore shall be, Whether the Party hath Interest or Title to the Goods, or no; and not whether he used any Force in getting them; and if it be found for the Defendant, the Force is excused: But the Force used in an Entry into Lands or Tenements, is the material Matter, and punishable, although the Entry might have been lawful.

Also, if there be an Attempt made to dispossess me of my Land, or to disturb me of my Highway, or to turn an ancient Water-course from my Mill, I may lawfully use Force to resist it. See *Tit. Surety for the Peace, cap. 72.*

A Keeper doth enter and chase upon my Land, pretending this to be within his Purview, where it is not. If I command my Servants to beat him off my Ground, this seemeth justifiable in the Defence of my Possession, against such unlawful Claim. Yet *quere.* ^{Dyer 327. Crom. 68.}

C H A P. CXXVIII. *Vide* LXXIX.*Where Forcible Detainer of Possession is lawful.*

8.H.6.c.9.
31 El. 11.
P.Force 4 **T**HE Statute of 8 H. 6. concludeth thus, *Provided that such as keep their Possession by Force, after that they or their Ancestors, or they whose Estate they have in such Lands, &c. have continued their Possession in the same three Years or more, shall not be endamaged by Force of that Statute.* §. 1.

And by Force of this Statute and Proviso, every Heir, and every Feoffee, may justify to keep their Houses and Possessions by Force, where they or their Ancestors, or their Feoffors, or they whose Estate they have, have been in peaceable Possession thereof by the Space of three Years, or more. *Cro.* 187.

22 H. 6. 6.
1. b.
Br.Force.
6.
22 & 29.
See the
Statute of
31 El. 11 Yet this Proviso must (as it seemeth) be thus construed, *sc.* That where a Man is seized (of a lawful Estate or Possession) of an House or Lands, and he or his Ancestors, or they whose Estate he hath therein, have continued the Possession of the same peaceably by the Space of three whole Years together without Interruption, (and his Estate not ended) there he may hold and keep such Possession with Force, against all others, yea, it seemeth, if he shall hire Strangers to aid him, to keep such Possession, or shall have his Company in Armour, he is not punishable by these Statutes: But he may not resist the Justices of Peace that shall come to view this.

P. R. 37 And if he shall be indicted for such his Forcible Holding (after three Years such quiet Possession) he may plead such his lawful and peaceable Possession, by the Space of three Years next before such Indictment, and thereby he shall avoid both the Imprisonment and Fine; and also shall debar the other Party of his Restitution. Neither may the Justices of Peace remove him from his Possession, though it be found by the Inquisition taken before them, that he held that House or Land by Force, after three Years lawful and peaceable Possession, as aforesaid.

But here it seemeth, that these four Diversities are to be observed:

6 & 7 E. 6.
22 H. 6. 8.
Lamb. 65.
Br. Rest.
12. First, where the Party in Possession did enter peaceably, and where forcibly: For if a Man enter forcibly, and after continue his Possession peaceably by the Space of three Years without Interruption, yet (it seemeth) be shall not be aided by these Statutes. §. 2.

Br.Force.
22 & 39. Secondly, where the Party in Possession hath continued his three Years Possession peaceably, and where by Force.

For if after a lawful and peaceable Entry, a Man shall continue or hold his Possession by Force, this is a Forcible Holding or Detainer, and punishable by the Statute of 8 H. 6. And three Years of such Possession shall not aid him.

21 H. 6.
18. b.
F. Entry.
20. Thirdly, where the Party in Possession, is in by Right, and of a lawful State, and where by Wrong. And therefore if the Deseisor (or other Person that cometh in by a wrongful and unlawful Title) hath

hath continued such his Possession peaceably by the Space of three Years, without Interruption; he shall not be aided by either of these Statutes of 8 H. 6. or 31 El. Br. Force
Vid. 23. H.
8. p. seq.

For if a *Disseisor* hath continued his Possession forcibly, by the Space of twenty Years together, yet he may be indicted upon the Statute of 8 H. 6. before a Justice of Peace, of the forcible detaining of the same; and the same being found, the said Justice of Peace is to reseise the same, and to award Restitution to the Party disseised, or so put out. 14 H. 7. 28
Br. Force
10.

Fourthly, where the Party hath continued such his Possession three Years without Interruption, and where his Possession hath been interrupted or discontinued.

For if a Man hath been in peaceable Possession of Land, &c. by the Space of three Years, and above, by a good Title, and then is disseised and expelled by Force, and the Disseisee re-entresth peaceably; or the Disseisor is therefore indicted upon the Statute of 8 H. 6. and the Disseisee is thereupon restored, and is in Possession accordingly; yet in these Cases the Disseisee cannot justify the Detainer of the Possession of those Lands by Force, because his Possession was once interrupted: But after, (such Interruption and Re-entry, or Restitution) if he shall continue a peaceable Possession again for three Years together, then he may justify the Detainer of the Possession thereof by Force, by Virtue of the Proviso in the Statute of 8 H. 6. Br. Force
Dyer 141.
22 & 29.

If a Disseisor hath continued his Possession peaceably three Years, and after the Disseisee doth re-enter, or doth make his Claim so near as he dareth, and then the Disseisor re-enters again, or continueth his Possession (after such Claim) here the Disseisor cannot justify to hold the same with Force; for by the Re-entry or Claim of the Disseisee, the first Disseisin and Possession of the Disseisor was determined, and the Disseisor is in of a new Disseisin. 23 H. 8.
Br. Force
c. 22.
Litt. 429.

Also, if he that hath been a lawful Possessor of Lands by the Space of twenty Years together, be once clearly and wholly removed from the Possession of the same Land, he cannot come with Force, or Multitude, to put himself in Possession thereof again, and to detain the same with Force, because his Possession was not interrupted: And if he be indicted (upon the Statute of 8 H. 6.) for such Forcible Entry, he shall not be relieved (touching the Restitution) by the Statute of 31 Eliz. for that he had not the Occupation of the said Lands, nor had been in quiet Possession thereof by the Space of three Years together, next before the Day of such Indictment found. Dyer 141.

C H A P. CXXIX. *Vide* LXXX.

How many Remedies the Party hath, which forcibly and actually is either put out or kept out of the Possession of his Houses or Lands, &c. contrary to these Statutes.

^{4H.4.c.8.}
^{1R.2.c.9.}
^{8H.6.c.9.}
^{P. 2.}
^{F. N. B.}
^{348. c. &}
^{240. a.}
^{Co. 10.}
^{115.}
^{P. R. 39.}
^{9H.6.19.}
^{Fitz. 21.}
^{15 H.7.17}
FIRST, the Party so grieved (having an Estate for Life, in Tail, or Fee) may have his Affize or Action of Trespas of Forcible Entry upon the Statute of 8 H. 6. against such Disseisor; and therein if the Defendant be attainted of Force, he shall fine to the King, and also answer to the Plaintiff his treble Damages, and treble Costs of Suit; and also the Plaintiff shall thereupon have a Writ of Restitution to restore him to his former Estate. *Co. L. 257.*

But (this Action being at the Suit of the Party, and only for the Right) is only where the Entry of the Defendant was not lawful: For if a Man entereth with Force, where his Entry is lawful; as if a Disseisee shall enter upon the Disseisor with Force, he shall not be punished by Way of Action: But yet he may be indicted upon the Statute, and upon such Indictment found, the Party put out (*sc.* the Disseisor) shall be restored; for the Indictment is for the Force, and for the King. And here the Offender (*sc.* the Disseisee) shall make Fine to the King, although his Right be ever so good. *Br. Forc. 11. 15 H. 7. 17.*

^{Lamb. 178.}
Secondly, also the Party so grieved, if he will lose the Benefit of his treble Damages and Costs, he may be aided, and have the Assistance of the Justices of Peace, and that after divers Sorts. First, he may purchase a Writ out of the Chancery (directed to the Sheriff only, or to the Sheriff and Justices of Peace, and to every of them) for to remove the Force. And this is upon the Statute of *Northampton. 2 E. 3. c. 3.* the Form of which Writ you may see. *F. N. B. f. 249.*

^{Lamb. 176.}
^{Crom. 74.}
^{162.}
But upon this Writ, the Justice of Peace is to proceed only as a Minister, and to certify his Doings herein; and that Justice of Peace to whom the Writ shall be delivered, ought for to execute it, *sc.* he may remove the Force: But here he may not put the Party in Possession again, who was put out.

For the Manner of the Justices proceeding herein, see in the other Title of *Forcible Entry* before.

^{Dyer 187.}
^{Cromp. 165.}
Thirdly, also the Party grieved, may at the General Sessions of the Peace, within the same County, prefer his Bill of Indictment, upon the Statute of 8 H. 6. for such forcible Entry or Detainer: Which being found there, the Complainant shall be restored to his Possession by a Writ of Restitution, granted out of the same Court to the Sheriff.

Also the Party so grieved, for a more speedy Remedy, may complain to any one or more Justices of the Peace of the same County, of the said Force; and thereupon the said Justices of Peace may, *ex Officio*, and without any Writ, either do Execution of the Statute of *Northampton*, as aforesaid; or else must go to the Place where such Force

Force is, to see it, and to remove it, and to arrest and commit the Offenders, and shall also keep a Special Sessions to enquire of the said Force. And if upon such Enquiry, such Force shall be found, then the said Justice shall restore the Party grieved to his Possession again; and here no other Justice of Peace can grant a *Supersedeas* to stay the same Restitution.

See more hereof before in the other Title of *Forcible Entry*.

Also the Party grieved may remove such Indictment, found either at such General or Special Sessions, by a *Certiorari* into the *King's Bench*, and the Judges of that Court may award a Writ of Restitution, to the Sheriff of the County, to restore the Possession to the Party.

Enquiry. Now when the Justice of Peace shall make such Enquiry, he shall direct his Precept or Warrant to the Sheriff, commanding him to cause to come before the said Justice, at some Town there near, twenty four sufficient and indifferent Persons dwelling near to the said Lands or Tenements (whereof every one shall have in Freehold Lands or Tenements, forty Shillings by the Year at the least) to enquire upon their Oaths of such Force, &c. See before in the other Title of *Forcible Entry*.

Upon Default of Appearance of those Jurors, the Justice of Peace ^{8H.6.c.9.} may award an *Alias*, and after that *Pluries infinite*, till they come; ^{Lamb. 168.} but so that at the Day of the second Precept or Writ, the Sheriff must return forty Shillings in Issues, upon every one of them, and at the third Writ five Pounds; and at every Day after, the double.

And although any of such Jurors shall not have forty Shillings ^{Lamb. 155.} Freehold Land *per Annum*, yet their Presentment of such Force is good for the King, so as the Offenders shall fine therefore to the King; but whether the Party shall have Restitution upon such a Presentment, it being pleaded or shewed at that Time of the Restitution to be made, seemeth a Doubt.

If the Sheriff shall return smaller Issues upon the Enquirors than the Statute doth appoint, yet the Party indicted shall not impeach ^{Lamb. 156.} the Enquiry therefore.

Neither is it Cause to impeach the Enquiry, though the Justice of Peace do not go to see the Place where the Force is. *Marrow.*

And it is convenient upon such Enquiry, that the Evidence be given openly to the Jury, to the Intent it may appear to the Justice of Peace, or Court, whether there shall be reasonable Cause to stay Restitution, or no, after the Indictment found. See *Dyer* 122.

C H A P. CXXX. *Vide* LXXXI.

Of Restitution to be made to the Party put out.

§. 1.
*Restitu-
on.*

I Will here shortly recite the Words of the Statute, which for this Business of Restitution will give the better Light.

And if upon such Enquiry, it be found before the said Justices ^{8H.6.c.9.} that any have done contrary to this Statute (viz. have entred, or held with Force) the said Justices of Peace, &c. shall reseise the said Lands

Lands or Tenements so entred upon, or holden, and put the Party so put out, in full Possession of the same Lands and Tenements so entred upon and holden, as before.

P. R. 35. Here we see that after such Forcible Entry or Holding so found by Inquiry, the said Justices of Peace, &c. shall reseise the said Lands or Tenements, and shall remove the Force (*sc.* all such Offenders as shall be found in the House, or upon the Lands, that either entred or held with Force) and, upon the Prayer of the Party so put out, the said Justices of Peace shall restore him to his Possession again.

And herein the Justices of Peace need not stay or stand upon the Right and Title of either of the Parties.

But no Restitution shall be made, but where the Forcible Entry, or Detainer, is first found by Inquisition. *Br. Force* 27.

Crompt. 166. Concerning the Inquisition or Indictment, the Justices of Peace shall do well to peruse and regard the same, to see if it be sufficient; for the Justices of Peace ought not to award Restitution, where the Indictment shall appear to them to be any way insufficient in the Law, either in Matter or Form. §. 2.
Indictment
the Form.

Lamb. 156, 257. 1. First therefore to have Restitution, the Putting out (by express Words) must be in the Indictment, and found by the Inquisition: For another Man may enter upon me, and yet not put me out, and then there needeth no Restitution to be made by the Justices.

And this Putting out is to be understood only of House or Land, and not of a Rent, Common, and Advowson, and such like, into which an actual Entry cannot be made; and therefore none shall have Restitution, but such only as are put out of House or Land.

And the *Estate* must be set forth, for 'tis not sufficient to alledge generally that *possessionatus fuit*, because Tenant at Will may be possessed; but he is not within either of the Statutes. *Sid.* 102.

And the Quality of the Thing on which the Entry was made, must be set forth as into a Messuage, Meadow, Wood, &c. for entering into *tenementa* generally is not good. *2 Roll. Rep.* 46.

An Entry into two Closes *prati sive pastura* not good for the Incertainty. *2 Roll. Abr.* 81.

The Indictment was for a Forcible Entry into a Copyhold, (*viz.*) that the Defendant *ejecit & disseisivit*, void, because Disseisin is applicable only to a Freehold, it ought to be *ejecit, expulit & amovit*. *Raym.* 67.

Lamb. 481. 2. Also the Indictment ought to express the Quality of the Thing entered upon, &c. *sc.* Whether it be a Messuage, Cottage, Meadow, Br. Force. Pasture, Wood, or Land Arable: For if the Indictment be, that by strong Hand they did enter the Tenement, &c. It is void for the Incertainty, because the Word *Tenement* may extend to either of them. 23.

14H.6.16. 3. Also the Indictment must have these Words, (*viz.*) *yet hold out*, Br. Force otherwise the Party shall have no Restitution; and yet these Words 13. be not in the Statute: But without these Words in the Indictment, it may be supposed and thought, that he which put me out, hath let the Possession again, or that I have gotten it again; and then the Restitution is needless.

So as in every such Indictment, these Words are material, *sc.* *Expulerunt, & adhuc extra tenent*. And for lack of either of these Words, no Restitution shall be made or awarded.

4. Also one of these two Words, *with strong Hand*, or *with Multitude*, seem to be material in the Indictment; unless they be implied by * reciting the Statute of 8 H. 6. and concluding against the Form of the Statute, or by some other Words in the Indictment. ^{Lamb. 145.}

* But the best way is not to recite the Statute, for if 'tis mis-recited in any Thing, the Indictment will be quashed. Cro. Eliz. 93, 96, 106, 307. 1 Bulst. 218.

For the Form to be used in these Indictments, see more after Tit. *Indictments*.

If a Man shall be restored upon an insufficient Indictment taken before the Justices of Peace; and this be removed in the *King's Bench*, ^{162.} the Court there will cause the Party to be restored, that before was put out by the Justices of Peace.

5. Also if Error or Insufficiency be in the Indictment, taken before the Justices of Peace, and yet a Precept or Writ of Restitution is awarded by them, any two of those Justices which were present at the Taking of the said Indictment, upon the Prayer of the Party, may (at another Sessions, or out of the Sessions) grant and award a *Superfedeas* to the Sheriff, to stay the same Restitution, if the Sheriff had not made Restitution before the *Superfedeas* came to his Hands. ^{Cromp. 163 & 166. b.}

But no other Justice of Peace (besides those which were present at the Taking and Finding of the said Indictment) can grant a *Superfedeas*, if the Indictment were found at a special Sessions. And if it were found at the Quarter-Sessions, yet the *Superfedeas* shall be granted under the *Teste* of one of those Justices only which were present at the finding of the Force. *Ibidem.* ^{Dyer 187.}

A Man is indicted that he entred with Force, and held with Force, and upon the Traverse, it was found, that he entred with Force, but not that he held with Force; yet this Indictment seemeth good enough, and the Party shall be restored. ^{Cromp. 165.}

So two are indicted of a Forcible Entry and Detainer, and upon the Traverse, it is found, that the one entred with Force, and the other held or detained with Force, yet the Party shall be restored. *Br. Force* 15. ^{Ibid.}

If it be found by one Inquest, that *A.* put me out by Force, and by another Inquest, that I did put out *A.* by Force, either of us may pray to have Restitution against the other: But he that is first restored is in the worst Case; for the other may have Restitution afterwards, and then he that had Restitution first, is without Remedy, by the Hands of the Justices of Peace; saving that he may re-enter, if he can peaceably, or have his Action. *Br. Force* 6. ^{Cromp. 166.}

§. 3. *Several Indictments.* If it be found by one Inquest, that *A.* put me out by Force, and by another Inquest taken at the same Sessions, that *B.* did put me out by Force, I may chuse upon whether of these Indictments I will be restored: And if I have Restitution against *A.* and this be returned, I cannot have Restitution upon the other. But if (upon the Writ of Restitution) it be not returned that I have Restitution, then I may afterward have Restitution against *B.* upon the other Verdict if *B.* hath re-entred upon the first Restitution made to me. *Marrow.* ^{Cromp. 166.}

A. is disseised, or put out with Force by *B.* and after *B.* is put out with Force by *C.* And all this is found by one and the same Inquisition. Here *B.* may have Restitution against *C.* (for *B.* hath more Right to the Possession than *C.*) and then may *A.* have Restitution

against *B.* But upon this Inquisition, if *A.* have Restitution first, then *B.* shall not have any Restitution, otherwise, if these had been found by several Inquisitions.

1 Vent.
265.
1 Salk.
260.

If an Inquisition be removed into *B. R.* by *Certiorari*, there can be no Restitution, if the Defendant doth not traverse the Force, or plead three Years quiet Possession before the Force.

C H A P. CXXXI. *Vide* LXXXII.

Who shall award and make this Restitution.

After the Force is found by the Inquest, the Justice of Peace (before whom 'tis found) may himself put the Party in Possession again; or he may make his Precept (under his own *Teste* alone) to the Sheriff to do it. *Dyer* 187.

The Form of the Precept to the Sheriff to make Restitution, see *postea* Tit. *Precedents*.

Dyer 187. But no other Justice of Peace hath any Authority (by the Statute) to grant or award Restitution, but only he or they before whom the Force was found by Inquisition. Nay the Justices of *Oyer and Terminer*, nor the Justices of Gaol-delivery cannot grant Restitution, nor the Justices of Peace at their General Sessions of the Peace, cannot grant this Restitution, except the Indictment were found before them. And yet by some Opinions, if it shall happen that the Justice of Peace, before whom such an Indictment shall be found, before Restitution made shall happen to die or to be removed, then may the Residue of the Justices of Peace at their General Sessions, grant a Writ of Restitution.

Co. 91, 18. Also the Justices of the *King's Bench* (in Regard of their supreme Authority in all Cases of the Crown) either upon Certificate, or Delivery (to them made by the Justice of Peace before whom such Force was found) of the Presentment of such Force; or if the said Presentment or Indictment shall be removed before them by *Certiorari*, in both these Cases the Justices of the *King's Bench* may award Restitution. See before in the other Title *Forcible Entry, Fitz. Entry* 36. & *Cro.* 159.

Lamb.
161.

But neither the Justices of the *King's Bench*, nor any other (besides him or them that made the Inquiry) can personally restore the Party, but only by way of Precept to the Sheriff.

The Sheriff (if need be) may take the Power of the County, to execute the Precept of the Justices of Peace herein.

Lamb.
160.

And if the Sheriff upon such a Precept, or upon a Writ of Restitution from the Sessions, &c. shall return that he cannot make Restitution for Resistance, &c. he shall be amerced for making such a Return, because in such Cases he might have taken the Power of the County to assist him therein. See the like Case, *Fitz. Execution* 147.

Note, that the same Justices or Justice of Peace, before whom the Force was found by Inquisition, and which have granted his or their Warrant to the Sheriff, to make Restitution, may afterwards grant his or their *Supersedeas* to the Sheriff to stay the same Restitution.

But no other Justice or Justices of Peace, hath or have Authority to grant any *Superfedeas* in such Case, &c. See *Dyer* 123 & 187.

Indictment for a Forcible Entry into a Meadow, the Defendant tendered a Traverse, but the Justices refused it, and awarded Restitution; this being removed into B. R. the Court declared, that the Justices ought to have accepted the Traverse, for the first Finding is in Nature of a Presentment, which ought to be tried presently upon the Traverse, and if it be found no Force, no Restitution ought to be awarded. Sid. 287.

Where the Justices find a Force, and make a Record of it on their own View, they cannot grant Restitution, but must commit the Offender. 1 *Vent.* 308.

C H A P. CXXXII. Vide LXXXIII.

To whom Restitution shall be made.

§. 1. **T**HIS Restitution ought to be made to him that was put out, and P. R. 38. to none other; for so are the Words of the Statute.

Therefore if the Father be out by Force, and dieth, his Heir shall not have Restitution; yet here the Justices may imprison and fine the Offenders: For by such Forcible Entry they have broken the Peace. See *antea*, in the other Title of *Forcible Entry*.

Also, if after the Death of the Father, a Stranger abateth, or en-Lamb. treth into his Land by Force, before the Heir hath gotten a *actual Possession*, the Heir shall not have Restitution, because he had but a *Possession in Law*, descended upon him. 156.

The Disseisee doth put the Disseisor out with Force, the Disseisor *Fitz.* 248. shall be restored: For the Right or Title is not commonly disputable, or material; but by Words of the Statute, he that is in such sort (i.e. forcibly) put out, shall be restored.

Yet it seemeth in this Case, that upon Traverse tendred by the Disseisee, and his Right appearing, the Justice of Peace may stay Restitution. See hereof after under this Title. *Dyer* 122.

Also, if the Disseisor be restored again, yet the Disseisee may after *Br. Force.* re-enter peaceably, or have his Affize. *Fitz. Entry* 20. 6.

But if the Disseisee shall enter peaceably upon the Disseisor, and *Crom.* so they both shall abide and continue there together for divers Days, 163. and after the Disseisee doth put out the Disseisor with Force, and is thereof indicted. Here the Disseisor shall not be restored; for the Disseisor's Possession was avoided in quiet Manner at the first Entry of the Disseisee, and so the Disseisor had no Possession in the Eye of Law when he was put out.

If the Disseisee shall enter peaceably, the Disseisor and his Family *Crom.* being abroad, and after the Disseisee shall keep his Possession with *Force*, the Disseisor shall not be restored, by Reason of the *eign Title* of the Disseisee, and for that he entred peaceably. See *antea*, in the other Title of *Forcible Entry*. 164.

But here the Disseisee shall be imprisoned and fined for keeping his Possession with Force; for *Forcible Keeping or Detaining* is as well prohibited as *Forcible Entry*.

Cromp. And here note, That the Being of a Man's Wife, Children or Ser-
 164. vants, in the House, or upon the Land, do preserve his Possession; but
 Fitz. h. his Cattle being upon the Ground, &c. do not preserve his Possession,
 Affize 418
 Lit. 140. Also when Two are in Possession of an House, &c. and the one
 Perk. 45. claimeth by one Title, and the other by another Title, here the Law

shall adjudge him to be in Possession, who hath the best Right. So
 that if *A.* shall wrongfully enter upon *B.* and they both shall continue
 in the House, and after *B.* shall put out *A.* with Force; *A.* shall not
 be restored, for *A.* never gained any Possession by his Entry.

Fitz. 149. Two Jointenants, or Tenants in Common, and one of them doth
 forcibly put the other out of his Possession; he that is so expelled,
 may have an Action of Trespass of Forcible Entry against his Compa-
 nion, upon the Statute of 8 H. 6. And thereupon he shall have a Writ
 of Restitution to restore him to his former Estate: But what the Ju-
 P. R. 36. stice of Peace can do herein, *Quere*, for that his Entry and Possession
 is lawful through the whole Land, in respect of his own Moiety and
 State. See 8 E. 4. 8.

Two Jointenants be put out by Force and one of them only sueth
 to have Restitution, Restitution shall be made unto him.

Lessee for Years, or a Copyholder, &c. may pray, and shall have
 Restitution, as well as he in the Reversion, or the Lord.

P. R. 38. If Lessee for Years be put out of his Term by Force, and die, tho'
 after his Death this Force be found by Inquisition, taken by a Ju-
 stice of Peace; yet his Executors shall not be restored to that Land
 (by the Justice) for that they are not the same Person that was put
 out.

"The particular Tenant, as Tenant for Years, or a Copyholder,
 "shall be restored notwithstanding the Lord or Lessor (who have the
 "Freehold) will waive it, or disagree to it as to themselves; and
 "thereupon this Case hapned. The Lord of a Manor commanded
 "A. B. and C. to enter with Force upon his Copyholder, which they
 "did, and an Indictment is preferred *quod expulerunt* the Copy-
 "holder, and disseised the Lord which forced, and the Lord labour-
 "ed that no Restitution should be made; for that, as was alledged,
 "Restitution was to be made out of respect to the Freehold: Yet the
 "Court granted Restitution to the Copyholder. For the Court ought
 "to reform the Wrongs in their several Degrees; and that is, to re-
 "store the Copyholder first who is expelled. And so was done, as was
 "said by Justice *Williams* in the Case of the Lord *Norris* who with-
 "stood a Restitution to his Lessee. Sir *Andrew Nowell's Case*, *Yelv.*
 "p. 81.

"The Words of the Statute of 21 Jac. 15. are too strictly taken,
 "and shall not be extended by Equity, and to that Purpose this Case
 "hapned; an Indictment of Forcible Entry was, *Adtunc exist. liber.*
 "ten. B. *ad voluntatem Domini secundum consuetudinem manerii.*
 "The Party in this Case could not be restored, because it is not said
 "per *Copiam rotulorum cur'*. And it may be she was Tenant by the
 "Verge, and not by Copy. But it was holden, that a Copyholder's
 "Widow that held *per bancum* should be restored. *Latch. p. 182.*

C H A P. CXXXIII. *Vide* LXXXIV.*What Causes there may be for Staying the Justice of Peace from granting Restitution.*

§. 1. **A**Lthough the Party indicted for a Force shall not be heard nor ^{Lamb.} suffered to give his Title in Evidence, to excuse himself of his ^{151.} Forcible Entry or Detainer, to save his Fine due to the King for such ^{Cromp.} Force (which Fine he shall make, tho' his Right be ever so good); yet to the Restitution (which the Complainant shall demand, if the ^{162.} Force be found) the Defendant shall be heard to disprove the Title of the Complainant, or what we can say otherwise for the Stay of Restitution. *Quere*, and see before in the other Title of *Forcible Entry*. ^{Br. Force 11.} ^{Dyer 122.}

Now the Defendant (or Party indicted) for the Stay of Restitution, may at the Time of the Restitution to be made, plead or alledge any of these Things following.

1. His quiet Possession by three Years together.
2. He may deliver to the Justices of Peace, or Court, a *Certiorari*. And this is a *Supersedeas* to them. See the Statute 21 *Jac.* 8. hereafter.
3. He may tender his Traverse; but Mr. *Lambert* seemeth to ^{Lamb.} doubt whether the Party may be admitted to his Traverse before the ^{162.} same Justices of Peace. And he thinks it safer for the Justices to make Restitution, notwithstanding the Offer of Traverse, or rather wisheth the Justices to deliver, or certify the Presentment into the *King's Bench*, and so to refer the further Proceeding to them, &c.
4. He may plead the Insufficiency of the Indictment.
5. He may plead the Insufficiency of any of the Jurors, *sc.* for not having forty Shillings Freehold Land *per Annum*, and must not be Ancient Demesne or Copyhold, but Charter Lands. And in this Case Mr. *Marrozo* is of Opinion, That the Party shall have no Restitution. Yet Mr. *Lambert* and Mr. *Crompton* seem to be of the contrary Opinion. *Lamb.* 155. *Cromp.* 165. *Ideo quere.*

§. 2. And it seemeth (by the Opinion of Mr. *Lambert*), That the Justices of Peace ought not to stay Restitution, save only, either by alledging three Years quiet Possession, or by Removing the Record and Presentment into the *King's Bench* by a *Certiorari*. *Lamb.* 165.

For the First, there shall be no Restitution awarded (upon any ³⁵ Indictment of Forcible Entry, or Holding with Force) where the Party ^{El. 11.} indicted hath been in quiet Possession by the Space of three whole ^{Three} Years together next before the Day of such Indictment found, if his ^{Years} Estate be not ended; and this the Party indicted may alledge to stay ^{Pof-} the Restitution, and the Restitution upon this shall be staid by the ^{session.} Justice of Peace, until it be tried, if the other Party will deny or traverse the same. And if the same Allegation be tried and found against the Party indicted, then shall he pay such Costs and Damages to the other Party, as shall be assessed by the Justices before whom the same shall be tried; the said Costs and Damages to be recovered and levied notwithstanding by the Course of the Common Law. 31 *Eliz.* 11.

Crompt.
164.
P. R. 37.

Also if a Man who hath made Forcible Entry or Detainer, be in doubt that he shall be indicted before the Justices of Peace, (upon the Statute of 8 H. 6.) and that thereupon Restitution will be awarded against him, he may have a Writ of *Certiorari* out of the *King's Bench* ready, and when the Bill of Indictment is found, he may presently deliver it to the Justice of Peace or Court. And this is *Superfedeas* to them for to stay the Restitution; for that upon this Writ, the said Indictment shall be removed from them into the *King's Bench*.

9. 5.
Certio-
rari.

And although the Indictment be found after the *Teste* of the *Certiorari*, it is not material, for they be both the *King's Courts*, &c.

6 H. 7. 16.

But if a *Certiorari* cometh to the Justice to remove an Indictment of Forcible Entry taken before the Justice of Peace in the Country, and the Party will not sue to remove it, but suffereth it to lie still, the Justice of Peace may proceed to grant Restitution, notwithstanding the Writ, as *Hobart* the *King's Attorney* said in 6 H. 7. But *Keble* held Opinion against him; and it seemeth rather, that the Justice of Peace ought *Ex Officio*, to send the Indictment away, because they are commanded so by the Writ. And this Writ is a *Superfedeas* of it self to the Justices of Peace, to stay their Proceedings: And if they shall proceed after, it is erroneous. *Br. Judges* 17.

Lamb.
198.

Crompt.
162.

After Restitution made by the Justice of Peace, if the other Party doth remove the Indictment by a *Certiorari* of a more eign Date than the Indictment, the Justice of the *King's Bench* may award Restitution back again: For upon the Matter, the Justice of Peace had no Power to make Restitution, for that the *Certiorari* hath Relation from the Date thereof.

Ibid.

After Restitution granted from the Sessions, and delivered to the Sheriff, the other Party having a *Certiorari*, delivereth it also unto the Sheriff after the Sessions; the Sheriff shall not surcease thereupon (for he hath no Authority to allow thereof). But if the *Certiorari* were delivered to any Justice of Peace, he may thereupon grant a *Superfedeas* to the Sheriff. And if Restitution were made by the Sheriff before the said *Superfedeas* came to his Hands, then the other Party shall have Restitution back again in the *King's Bench*, upon the Indictment removed thither.

But for that Bills of Indictment of Forcible Entry or Riots, being found before the Justices of Peace are oftentimes removed by Writs of *Certiorari* out of the *Chancery* or *King's Bench*, by the Means of the Person indicted, by Means whereof such Offenders for the most Part escape unprosecuted and unpunished; (for that the Party grieved will not undergo the Travel or Charge, &c.) It is therefore enacted (by the Statute made 21 Jac. cap. 8.) That all such Writs of *Certiorari*, shall now be delivered at some Quarter-Sessions of the Peace, in open Court; and that the Parties indicted, before the Allowance of such *Certiorari*, shall become bound unto such Person which shall prosecute such Bill of Indictment against them, in the Sum of 10 l. with such sufficient Sureties, as the Justices of Peace, at their said Quarter-Sessions of the Peace, shall think fit, with Condition, to pay unto the said Prosecutors of such Bill of Indictment (within one Month after the Conviction of such Parties indicted) such Costs and Damages, as the said Justices of Peace in the said Sessions of the Peace shall assess or allow. And in Default thereof, it shall be lawful for the said Justices to proceed to Trial of such Indictments, any such Writ of *Certiorari* to remove the same Indictment notwithstanding.

" A

" A Bill of Forcible Entry was found before Justices of Peace, and Restitution awarded, but not executed; a *Certiorari* was delivered to one of the Justices, who refused to open it without consulting with his Companions, and Restitution is made. This was moved in the *King's Bench*, and the Restitution awarded, and the Justice of Peace chid, in the Case of *Fitz-Williams*. *Yelv. p. 32.*

§. 4.
Traverse.

" The Tender of a Traverse (to an Indictment of Forcible Entry, upon the Statute of 8 H. 6.) is no *Superfedeas*, but in Discretion; so as the Justices of Peace or Court (notwithstanding the Traverse tendred) may grant or may stay the Restitution at their Discretion, according as the Truth of the Right or Title shall appear to them: And so is the Use of the *King's Bench*. *Dyer 122. pl. 34.*

Or else the Justices of Peace (before whom the Indictment was found) may after Traverse tendred, certify or deliver the Indictment into the *King's Bench*, or to the Quarter-Sessions, and so refer the further Proceedings therein to them.

But if the Party indicted shall tender a Traverse presently, whereupon Restitution is stayed, and after he shall not pursue his Traverse with Effect (but discontinueth it) and after doth tender another Traverse upon Restitution prayed at another Time; the Justices of Peace or Court, shall do well to proceed to grant Restitution, notwithstanding such Traverse tendred. *Crompt. 165.*

And it is the Course of the *King's Bench*, that he that tendreth the Traverse there (upon such an Indictment) shall bear all the Charges of the Trial, and not the King, nor he at whose Suit the Indictment was found: And the same Reason seemeth upon an Indictment traversed before Justices of Peace. *Ibid.*

But upon a Forcible Entry found, and a Traverse tendred, if the Justices of Peace will try the Traverse, it seemeth they ought to cause a new Jury to be returned (by the Sheriff before them) to try the same Traverse. The which may be done the next Day, but not the same Day. *Crompt. 150, 152.*

§. 5.
Pardon.

" Also after the Indictment of Force found, if a Traverse be tendred, or whatsoever shall be alledged for the Stay of Restitution, it ought to be in Writing (and not verbal only), for upon the Traverse, &c. a *Venire facias* must be awarded, a Jury returned, the Issue tried, a Verdict found and a Judgment given, and Costs and Damages awarded: And they must have a Record, which must be in Writing, to do all this, and not a verbal Plea. *Vide 14 H. 8. 16. Fitz.* And all this must be done at the same Session, if it be desired; or else Restitution is to be granted. *Semble auxi que Pardon le Roy* will discharge the Forcible Entry or Detainer, and bar Restitution.

" And in the Case of *Fawcett*, H. 4 Jac. the Forcible Entry was pardoned by a Parliament-Pardon; and the Court was of Opinion, Restitution could not be granted: For by the Pardon, the Strength of the Indictment is gone, but there is a Remedy for the Party by Suit, where he may be sure of the Effect of it. And Justice *Williams* said, That *Thynne* being indicted for an Entry by Force, upon the Lands of the Lord *Stafford*, got the King's Pardon, and pleaded it in Bar of Restitution; and it was adjudged a good Plea. *Yelvert. p. 99. Cro. 148. S.C. Noy 119. S.C.*

C H A P. CXXXIV.

Restitution, where it shall be granted.

" IT is generally held as the Law and Course of the Court of § 11
 " *King's Bench*, that Restitution is a Thing in the Discretion of
 " the Court; and they will grant it or deny it, as the Justice and
 " Reason of the Case shall require: And therefore they will grant it
 " ordinarily in these Cases.

1. If the Indictment removed, be for any Cause appearing in the
 " Body of it, or Caption quashed.

" 2. If a *Certiorari* hath issued, and the same be not allowed, or
 " Proceedings stayed thereupon; but Restitution be granted after the
 " Allowance or Tender of it.

" 3. If any indirect Course be used to avoid the Effect of a *Certio-*
 " *rari*, as I remember this Case hapned. One P. having made a For-
 " cible Entry upon L. of Lands in W. And being threatned with an
 " Inquiry of a Force, he imployed one C. his Attorney, to procure a
 " *Certiorari*, and gave the Names of those that were most likely to
 " be indicted: Which one R. the Attorney of L. suspecting, by pre-
 " tending himself to be the Attorney of P. spake to the Clerk in the
 " *Crown-Office*, understood the Names of those for whom the *Certio-*
 " *rari* was intended to be made, and procured an Inquiry by the Ju-
 " stices in the Country, and such to be indicted as the *Certiorari* was
 " not for. So when the *Certiorari* came, it was insignificant, and L.
 " was restored. But this Matter appearing in the *King's Bench*, H.
 " 1658, Restitution was awarded.

" 4. If the Justices below shall misbehave themselves, and shall
 " not allow the Plea of three Years Possession well pleaded.

" But Restitution being as I said, a Thing discretional, the Equity
 " and Reason of the Case doth often incline the Court, not to grant
 " it where they may do it, especially if the Party in Possession shall
 " offer to appear, and go to speedy Trial of the Right; and so I have
 " often observed it to be done.

C H A P. CXXXV. *Vide* LXXXV. (82)*Riots.*

IT may plainly appear to all such as have been conversant in our Statutes.
 " Chronicles, how dangerous to this Kingdom, unlawful Assemblies
 " have been in all precedent Ages, even such as, at the first were very
 " small, and began upon small Occasion; yet not being repressed in
 " Time, grew to such Greatness, that they afterwards put in hazard the
 " State. And therefore it is Wisdom for all Justices of Peace, to indea-
 " vour to quench the Beginnings of such Assemblies, as knowing, that
 " for Want of timely Restraint, they may soon grow to the like Dan-
 " ger again.

Now for the better Suppressing of such unlawful Assemblies, and partly for the better Enabling the Justices of Peace therein, there were three Statutes provided by the Wisdom of the Realm, and are remaining yet in Force; That is to say, the Statute of 13 H. 4. 7. 2 H. 5. 8. & 19 H. 7. 13.

The Statute of 13 H. 4. authorising, nay, upon a great Penalty en-^{13 H. 4. cap. 7.} joining the Justices of Peace (together with the Sheriff) to arrest, remove and punish the Offenders.

But for that the aforesaid Statute gave no Remedy to the Party ^{2 H. 5. 8.}grieved, if the Justice of Peace or Sheriff should make Default; as also for the better Stirring up the Justices in this Business, the Statute of 2 H. 5. was made, authorising the Lord Chancellor of *England* (at the Instance of the Party grieved) to grant a Commission, to enquire of the Defaults of the two next Justices of Peace and Sheriff, in not executing the aforesaid Statute of 13 H. 4. And withal providing, how the Charges of the Justices, about the Suppressing and Enquiry of such Riots, should be born; and also limiting what Punishment, as well the Offenders attainted of such Riots, as also such as should not be ready to assist and aid the said Justice to repress such Rioters, should suffer.

And lastly, for that the two former Statutes did not express of what Sufficiency the Jurors, impanelled to enquire of Riots, should be; nor what Issues they should lose, if they appeared not; nor any certain Punishment was inflicted upon the Maintainers or Embracers of such Jurors: Therefore the Statute 19 H. 7. was made. But so much of these Things as concern the Justices of Peace, do appear more particularly here before: And therefore now I will proceed in this ^{19 H. 7. 13.} Business.

C H A P. CXXXVI.

First, What shall be said to be a Riot, Rout or unlawful Assembly, within the Meaning of these Statutes.

- §. 1. ' **A**N unlawful Assembly, Riot or Rout, is where three or more ^{Br. Riots; Cromp. 68.} shall gather together, come or meet in one Place, to do ^{P. R. 25.} some unlawful Act with Violence, and that unlawful Act must be *Malum in se*, and not *Malum prohibitum*. As when three Persons or more, shall come and assemble themselves together, to the Intent to do any unlawful Act, with Force or Violence against the Person of another, his Possessions or Goods. As to kill, beat or otherways to hurt, or to imprison a Man; to pull down a House, Wall, Pale, Hedge or Ditch; wrongfully to enter upon or into another Man's Possession, House or Land, &c. Or to cut or take away Corn, Grass, Wood or other Goods wrongfully; or to hunt unlawfully in any Park or Warren; or to do any other unlawful Act (with Force or Violence) against the Peace; or to the manifest Terror of the People; if they only meet to such a Purpose or Intent, although they shall after ^{Br. Riot de. 4. 5.}

Lamb. 179. 181. Bro. 4. depart of their own Accord, without doing any Thing, yet this is an *Unlawful Assembly*.
unlawful Assembly.

If after their first Meeting, they shall ride, go or move forward *Rout* toward the Execution, of any such Act (whether they put their intended Purpose in Execution, or not). This is a Rout.

And if they execute any such Thing in Deed, then it is a Riot.

Br. 4, 5. And yet by the Opinion of some, a Rout is only where such a *Riot* Company (of three or more) are so assembled, for their own common or proper Quarrel (and not in the Quarrel of any other Person.) As where the Inhabitants of a Town do assemble together to pull down a House, Wall, Pale, Ditch, or other Inclosure, pretending to have Title of Common, or a Way there; or to beat a Man that hath done them some publick Offence. But yet the Word *Rout*, seemeth to have a more large and ample Meaning, as appeareth by the Statute of 18 Ed. 3 c. 1. speaking of Routs that are brought in the Presence of the Justices; and the Statute of 7 R. 2. c. 6. treating of Riding in great Routs.

Master Finch described them shortly thus, *Fi. lib. 2.*

Br. 4, 5. Lamb. 180. An *unlawful Assembly* is, when above the Number of two shall assemble to do any unlawful Act.

A Rout is, when they set forward to do it.

A Riot is, when they do it in Deed.

But at the Common Law (before the Making of these Statutes) these Facts and unlawful Assemblies committed or done, were no more than common Trespasses; although sometimes by the Discretion of the Justices, a greater Fine was assessed in such Cases than was for other common Trespasses.

Now in Riots, Routs, and unlawful Assemblies, these four Circumstances are to be considered. § 2. Circumstances.

1st. The Number of the Persons assembled.

2d. The Intent and Purpose of Meeting.

3d. The Lawfulness or Unlawfulness of the Act.

4th. The Manner and Circumstances of doing it.

For the Number, there must necessarily be *three Persons* at the least, so gathered together; for else it can be no Riot, *Rout* or unlawful Assembly within the Meaning of these Statutes. The Number.

But an Assembly of an hundred Persons or more (yea, though they be in Armour) yet if it be not in Terror or Affright of the People, and were assembled without any Intent to break the Peace, it is not prohibited by any of these Statutes, nor unlawful. See *infra*.

Crompt. 6. P. R. 25. For the Intent: It seemeth it can be no Riot, *&c.* except there be an Intent precedent to some unlawful Act, and with Violence or Force. § 3. The Intent.

Lamb. 183. Crompt. 61. And therefore, if divers be assembled, and none of them do know to what End or Purpose they are met; this can make no Riot or Rout, till the Intent be known.

If the Master (intending to make a Riot) taketh with him his ordinary Servants, and maketh an Affray or other Outrage with them. This is no Riot in the Servants, except their Master had made them privy to his Intent before, but the Master only shall be punished for this. Yet *Quare*, whether this shall be adjudged, or punished in the Master as a Riot.

And in this former Case it is not material, though the Number of his Servants that go with him are above his Degree, so long as they be his Household Servants. *Lamb. 184. P. R. 25.*

If divers being lawfully assembled, shall quarrel or fall out upon the sudden, without any former Intent. This is no Riot, but a sudden Affray. *Crom. 62.*

Affray. If divers be at an Ale-house, and without any Intention of an Affray they suddenly fall together by the Ears. This is no Riot, but a sudden Affray, because they had no such Intention before. *Lamb. 184.*

If a Jury being together, shall fall out and fight. This is no Riot, because they were lawfully assembled. *Ibid.*

Also where there be three or more gathered together, either to execute the Justice of the Law, or for the Exercise of Valour, and Trial of Activity, or for the Increase of Amity or neighbourly Friendship, (and not being met with an Intent to break or disturb the Peace, or to offer Violence or Hurt to the Person of any) such Assemblies be not prohibited by any of these Statutes, nor unlawful; as if the Sheriff, Under-Sheriff or Bailiff, shall take Power (what Number they shall think good) to execute the King's Process, &c. it is lawful: So of other Officers. See more thereof *postea*, Tit. *Posse Comitatus*.

So it is a lawful Assembly, which is gathered together to run at Tilt, &c. by the King's Commandment. *2 H. 7. 1. Br. Riot 20.*

So the Assembly of People, and their Use of Armour upon *Midsummer Night in London*, being only for Sport, is lawful; and though it be with a great Assembly of People, and in Armour; yet it being neither in Affright of the People, nor *malum in se*, nor to do any Act with Force or Violence against the Peace, it is lawful. *Br. 2.*

"If Stage-players, by their Shows, occasion an extraordinary and unusual Concourse of People to see them act their Tricks; this is an unlawful Assembly and Riot: For which they may be indicted and fined, as *Coke* said, *M. 12 Jac. Roll's Rep. 2 part p. 109.*

Also if divers do assemble and gather together, to drink at an Ale-house, or at a *Christmas* Dinner, or at a Match of Shooting, or such lawful Sport; or else to play at Football, Bucklers, Bear-baitings, Dancings, Bowls, Cards or Dice, or such like unlawful Games or Sports. This is neither Riot, Rout nor unlawful Assembly within these Statutes, nor here prohibited: For these Meetings are not with any Intent to offer or do Violence or Hurt to the Person, Possessions or Goods of any other; neither are they *malum in se*, they are in themselves neither evil, nor unlawful, nor prohibited by the Common Law, though otherwise some of them are prohibited by Statute. See before Tit. *Games Unlawful*.

But if any of the Persons assembled together for any the Sports above mentioned (or for the like) came with any Intent or Purpose to break or disturb the Peace, or to offer Violence, or Hurt to the Person of any, and shall make an Affray, or do other Outrage. This seemeth to be a Riot, in so many as came with any such unlawful Intent or Purpose.

And if any of the Persons assembled together (to drink or play) at an Ale-house, or for any the Sports above mentioned, or the like, shall fall out suddenly (without any former Intention of an Affray) and in that their Falling out, they shall betake themselves to sundry Parts and shall make an Affray, that this shall be adjudged a Riot in so many of both Sides, as shall be Parties to that Affray or Quarrel. But

Quere hereof, for that it was without any such Intent before their said Assembly, and done only upon the sudden, and upon a sudden Occasion happening after their said Meeting; and again, their said Assembly was at the first lawful, or at least not prohibited by any of these Statutes, nor yet the Common Law. Co. 11. 87.

But otherwise, if by Agreement they shall meet again, and fight afterwards, that maketh it a Riot, as being a new Assembly upon the former Quarrel; and so their second Meeting was upon an Intent precedent to do an unlawful Act.

Where a great Number shall assemble themselves, or come into a House, and there detain Possession of the House with Force (though this is neither a publick Fact, or Force, done in the open Sight of the People;) yet this is a Riot, and the Justices of Peace punishable, if they shall not remove such Force, and suppress such Riots. See the Case of *Drayton Bassett* before, Tit. *Forcible Entry*.

CH A P. CXXXVII. Vide LXXXVI.

Concerning the Lawfulness or Unlawfulness of the Act.

NOTE, That the Lawfulness or Unlawfulness of the Thing done or intended, doth not always excuse or accuse the Parties to a Riot, &c. but so, that the Manner and Circumstances of the Act, must also be considered. *Lawfulness of the Act.*

For every Man may assemble Company to aid him in his House, against Injury or Violence: But if a Man be threatened, that if he come to such a Place he shall be beaten. In this Case, if he shall assemble any Company to go thither with him (though it be to safeguard his Person) it seemeth to be within the Compass of these Statutes, and unlawful. *Br. Riots* 1.

Every Man in peaceable Manner may assemble a meet Company (and may come) to do any lawful Thing; or to remove, or cast down any common Nuisance done to them.

Co. 5. 101. Every private Man, to whose House or Land any Nuisance shall be
 & 9. 55. erected, made or, done, may in peaceable Manner assemble a meet Company, with necessary Tools, and may remove, pull or cast down such Nuisance, (and that before any Prejudice received thereby) and for that Purpose, if need be, may also enter into the other Man's Ground. *Br. Nuisance*, 14 & 33.

36 Eliz. A Man erects a Wear, cross a common River (where People have a
 Crom. 66. common Passage with their Boats) and divers did assemble with Spades, Crows of Iron, and other Things necessary to remove the said Wear, and made a Trench in his Land, that did erect the Wear, to turn the Water, so as they might the better take up the said Wear, and they did remove the same Nuisance. This was holden neither any Forcible Entry, nor yet any Riot.

But in the Cases aforesaid, if in removing any (such Nuisance, &c.) the Persons so assembled shall use any threatening Words (as to say, they will do it in Spight of the other; or they will do it, though they die

die for it, or such like Words) or shall use any other Behaviour, in apparent Disturbance of the Peace, then it seemeth to be a Riot; and therefore where there is Cause to remove any such Nuisance (or to do any like Act) it is the safest not to assemble any Multitude of People, but only to send one or two Persons, or (if a greater Number) yet no more than are needful, and only with meet Tools, to remove, pull or cast down the same, and that such Persons tend their Business only without Disturbance of the Peace or threatening Speeches.

For the Manner of doing a lawful Thing, may make it unlawful.

Also the Manner of doing any unlawful Act, by an Assembly of People, may be such as that it shall not be punished as a Riot.

As if I shall assemble a meet Company to carry away a Piece of Timber or other Thing (whereto I pretend a Right) that cannot be carried without a great Number, if the Number be not more than are needful for such Purpose, although another Man hath better Right to the Thing so carried away; and that this Act be a wrong and unlawful: Yet is it of it self no Riot, except there be withal threatening Words used, or other Disturbance of Peace.

CHAP. CXXXVIII. *Vide* LXXXVII.

For the Manner and Circumstances.

AS there must necessarily be three Persons at the least assembled together to make a Riot, &c. so their being together, and their Demeanor must be such, as shall or may breed some apparent Disturbance of the Peace; either by threatening Speeches, turbulent Gesture, Shew of Armour, or actual Force or Violence (to the Terror of the peaceable Sort of People, or the imboldning and stirring up of such as are of evil Disposition) or else it can be no Riot, &c. For, as I said before, the Manner of doing a lawful Thing, may make it unlawful, &c. *converso.*

And therefore if divers in one Company, going to the Church, Fair or Market, shall go armed; or one going to the Sessions, or the like Assembly, shall go with his Servants in Armour (to the Terror of the People) though he or they have no Intent to fight, or to commit any Riot; yet this is a Rout by the Manner of his or their going, being needless, disordered, and against the Law. See 2 *Edw.* 3. c. 3.

But in the former Cases, if they had gone in privy Coats of Plate, Shirts of Mail, or the like, to the Intent to defend themselves from some Adversary. This seemeth not punishable within these Statutes, for that there is nothing openly done in Terror of the People.

One *N. W.* together with fourscore Persons, came with Spades, Mattocks, Pistols, Swords and Daggers in the Night, to a Piece of Ground (where Sir *Tho. St.* had made a great Wear cross over the River of *Trent*, in the County of *Nottingham*, to the great Nuisance of Passengers there, &c.) and there they made one or two little Trenches to let out Water, &c. And though it were lawful to make the Trenches,

Trenches, and to debruse the Nufance, yet for that they came with such Number, and Weapons, they were deeply fined in the Star-Chamber. 36 *Eliz.*

31 & 32
El. Crom. 64. Also one *Kemp*, Lord of a Manor, did enter with twenty Persons, and cut his Copyholder's Corn with Force, for that his Copyholder would not compound with him for his Fine; and although the Entry of the Lord was holden lawful, yet punishable as a Riot in Regard of his Number and Force.

Crom. 64. In all Cases where three (or more) shall enter into Lands, &c. with Force (upon the Possession of another) where their Entry is lawful, yet it is a Riot, by Reason of Number and Force; for the Stat. of 5 R. 2. prohibiteth the Entry with Force or with Multitude of People, although the Entry be (otherwise) lawful.

C H A P. CXXXIX. *Vide* LXXXVIII.

What Persons may commit a Riot, &c.

IF a Number of Women (or Children under the Age of Discretion) do flock together for their own Cause, this is no Assembly punishable by these Statutes, unless a Man of Discretion moved them to assemble for the doing of some unlawful Act, as *M. Marrow* held.

Lam. 184. Yet certain Women, that had apparelled themselves in Man's Apparel, and had pulled down riotously a lawful Inclosure, were punished for the same in the Star-chamber, as *Mr. Lamb* reporteth.

Also Women and Children may commit a Force, may commit Larceny, and may be bound to the Peace, as Breakers of the Peace. See before, *Tit. Surety for the Peace, and Forcible Entry, and Doct. & Stud.* 177, 148.

Concerning Children and their Punishments in such Cases, see *hic.*

Co. 3. 72. Also Women Covert are holden to be within the Stat. of *Mert. cap. 6.* for Ravishment of Wards; and within the Stat. of *Westmin. 1. cap. 20. de Malefactoribus in parciis*: And within the Stat. 8 H. 6. of Forcible Entry: And within the Statutes of 1 *El. cap. 2.* and 23 *El.* for Recusancy, although they be not named within any of these Statutes.

Co. Ibid. Also if a Woman Covert shall commit any Riot, or do any Trespass or other Wrong, she is punishable for it; and for a Trespass done by the Wife, or for a Scandal published by her, the Action lieth against both the Husband and Wife, *sc.* an Action of Trespass, or of the Case, shall be brought against the Husband and Wife, and there the Husband is chargeable to the Damages or Fine, because he is Party to the Action and Judgment. (See *paulo antea*, *Tit. Forcible Entry*.) But if a Woman covert without her Husband be indicted of a Trespass, Riot or any other Wrong, there the Wife shall answer, and be Party to the Judgment only; and in such Case the Fine set upon the Wife shall not be levied upon the Husband; yet after the Husband's Death, such Damages or Fine shall then be levied of the Wife her self; and as for Imprisonment or other corporal Pain, it shall be

be inflicted upon the Wife only, and not upon the Husband for his Wife's Act or Default.

And note, that any Subject of this Realm, for any Injury done to his Person, or done to him in his Lands or Goods, may pursue, and have the Justice of the Law, against any other Subject, be he bound or free, be it a Woman or an Infant, be they religious Persons or be they Persons excommunicate or outlawed, or other Person whatsoever, without any Exception, &c. for the King (by the Stat. of *Mag. Chart. cap. 29.*) saith, *Nulli vendemus, nulli negabimus, aut differemus justitiam, vel remedium.* Dyer 104.

But if a Mayor and Aldermen, or Bailiff and Burgeses, or the Fellows of any other Society, do assemble in their common Quarrel, and make a Riot or Rout, this shall be punished in their own private natural Persons, and not in the Body politick. *Br. Impr. 95.*

C H A P. CXL. Vide LXXXIX.

High Treason.

§. 1.
Defend.

HIGH Treason (called in Law, *Crimen lese Majestatis*) was always esteemed a grievous Offence, done or attempted against the Estate Regal, (viz. against the King the Head, Life and Ruler of the Commonwealth) in his Person, the Queen his Wife, his Children, Realm or Authority; as, Glanvil.

§. 2.
About
Life.

To compass the Death of the King, the Queen his Wife, or of their eldest Son and Heir. *25 E. 3. cap. F. 22.* 25 E. 3. c. 2. P. 1.

To compass the Death of the Father or Mother of the King, or of any of the King's Children, although that such Compassing be not brought to Effect, yet it is Treason, by *Britton* in his Title of *Appeals. fol. 39. Stams. fol. 1. p.* *Quere*, for it was Treason before the Statute, but not since, as *Stams. fol. 1. p.* holds.

To compass the Death of an Usurper of the Crown is Treason, for which the Offender may be arraigned in the Time of another King, as appeareth, *Br. Treas. 10.* Stams. 2. Co. 8. 28. Br. 24. 29.

To intend or imagine the Death of the King or Queen, though they bring it not to Effect; *sc.* if they shall declare this by an open Act, whereby it may be known, or to utter it by Words or Letters, is Treason.

To intend to deprive, depose or dis-inherit the King, is High Treason, if it may appear by any open Act; for no Crown can be taken from a King's Head, without Loss of his Head and Crown both, sooner or later, as his Majesty hath observed in his *just Defence of the Right of Kings.* See *Brit. and Stams. 1. p.*

And here the Intent of the Heart is enough, *sc.* if one shall intend, imagine, will or seek any such Thing, whether the Deed follow or not. If it may be discovered, it is High Treason in the King's Case.

So to say, that he will be King after the King's Death, is High Treason. See the Duke of *Buckingham's Case*, *13 H. 8. fol. 12.*

M. Glanvil also, and M. *Bracton*, say thus, or to this Effect: *Si quis machinatus fuerit, vel aliquid fecerit in mortem Domini Regis, vel ad seditionem Regis, vel exercitus sui, vel consenserit, consilium-*

ve dederit, vel auxilium procuraverit, seu presterit, licet id quod in voluntate habuit, non produxerit ad effectum, tenetur tamen criminis laesa Majestatis reus. See Glanv. lib. 14. fol. 110. & Bracton lib. 3. fol. 118. *Stamf. 1 v. x.*

"One *Williams* expelled the Middle Temple for Religion, wrote two Books, the one he called *Balaam's Ass*; the other *Speculum Regale*, wherein he took on him the Office of a Prophet, and said the King should dye *Anno Dom. 1621.* grounding himself upon the Prophecy of *Daniel* of Time and Times, and half a Time; and that now was the Time of *Antichrist*; for Sin was at the highest, and that this Land was the Abomination of Desolation, and the Habitation of Devils, &c. The Court held this to be High Treason, and that by the Common Law; for these Words import the End and Destruction of the King and his Kingdom, and that Antichristianism and false Religion is maintained; which is a Motive to People to commit Treason and Rebellions. It was also resolved, that although he pretended he did it for the King's Information, and as a Caveat and Admonition, because when he had declared the Judgment, he after added (*which God overt*); yet his good Intention shall not be respected, when his Words and Actions appear to the contrary; and when a Man hath spoken Treason in the Premises, he shall not qualify it, *with a God save the King.* Secondly, it was resolved, that although it seems to be his Opinion and Thought only; yet *in atrocioribus delictis punitur affectus licet non sequatur effectus*; and in this Case *scribere est agere.* Thirdly, It was resolved, That although his Books were inclosed in a black Box, and sent privately to the King; yet it was Treason *Car son intent appeirt per son act.* And *Telverton* the King's Attorney said, at Common Law, there were four Manner of Treasons, 1. Rebellion. 2. To deny the King's Title or Power Temporal or Spiritual. 3. To maintain or advance Superior Power to the King. 4. To bear the People in Hand, that the King's Government is Erroneous, Heretical, Unjust. *William's Case, P. 17 Jac. Roll's Rep. part 2. p. 88.*

And so note, that Treason may be committed by Imagination, and a Resolution to perform or do any Act, although it be not brought to Effect, as in these former Cases. This was the Case of *Bigtham* and *Tereish*, who were both hanged, only for that they had a Will to kill the King *Ahasuerus*, and sought to lay Hands on him. *Esther* 2. *Chamberlain of King Ahasuerus.* 21, 22.

Co. 4. 124. If one that is a Mad-man do kill or attempt to kill the King, it is in him High Treason; whereas Petty Treason, Homicide or Larceny, shall not be imputed to such a Person. *Vide Stat. 33. H. 8. cap. 20.* But *Coke 3 Inst. 6.* is otherwise, *Ideo quare.*

Dyer 128. Abr. One Constable pointed to another, saying to his Friends, *Behold King Edward* (who was then dead) and for those Words he had Judgment and Execution as a Traitor. *Dyer 128.* but Co. 7. 10. observeth, That the Words were accompanied with other Circumstances, which appear not in our usual printed Books.

"Treason may be committed by Words, as to say, The King being excommunicated by the Pope, may be lawfully deposed and killed by any Person whatsoever; which Killing is no Murder. *P. 13 Jac. Owen's Case.*

M m m

To

‘ To intend the bodily Hurt of the King, or to affirm that the King is not King, or is an Heretick, Tyrant or Usurper, &c. *Vide Stat. 13 Eliz. cap. 1.* To arrest or imprison the King is Treason, for that is the Way to kill him. *Roll's Rep. 2. Part p. 89.*

Also to deflower the King's Wife, his eldest Daughter being unmarried, or his eldest Son and Heir's Wife, is High Treason. *25 E. 3. 2.*

So it is if any Man shall deflower any other of the King's Daughters, yea, or the Nurses of any of the King's Children, as Mr. Britton writeth, *fol. 43. Stamf. fol. 1. b.*

§. 4.
War.

To levy War against the King, &c. in this Realm, is High Treason: Note, that to detain or hold a Castle or Fortrefs, against the King, is to levy War against the King. See *Br. Treason, 24. 25 E. 3. cap. 2.*

So to conspire to levy War against the King, &c. is High Treason.

Also to detain, keep or with-hold from or against the King, any of his Ships, or Ordinance, or maliciously to burn or destroy any of the King's Ships; or maliciously to bar any Haven within any of the King's Dominions; all and every of these are included within these Words, *Dyer 98. [To levy War against the King]* and so be High Treason. See *Br. Treason 24 & Stat. 14 Eliz. cap. 1. & quere.*

To sell any Armour to the Enemy, or to furnish the Enemy with Weapon or Munition, have been accounted Crimes treasonable. *W. Segar Norroy, of Honour Military and Civil, Pag. 14.*

If any Person having a Charge, shall yield the same unto the Enemy, this also is a Crime treasonable. *Ibid.*

So all Explorators or Spies, that betray our Secrets, and inform the Enemy thereof, are to be accounted Traitors. *Ibid.*

To practice with a Governor of another Country to invade this Realm, is High Treason; although such Practice be not put in Ure. *Eyer 298.*

So to kill one that is sent in the King's Messuage. *Ass. Stamf. 1. 1. Br.*

To encounter in Fight and kill such as are assisting to the King in his Wars, or such as come to help the King, is High Treason. *21 E. 3. 23. 45 Ed. Stamf. 1. 1. 3. 25. Br. Treason 7.*

These two last Cases were holden to be High Treason, before the Stat. of *25 Ed. 3.*

To succour the King's Enemies is Treason. *Thorp 22 Ed. 3. fol. 429.*

To be adherent to the King's Enemies (aiding them, or giving them Aid or Comfort, in his Realm, or elsewhere) is High Treason. See *Br. Treason 1. & 13. Fitz. Tryal 54. 25 E. 3. cap. 2.*

To be of Council with another in levying seditious War.

A Subject. If a Subject shall go beyond the Sea, and there shall adhere, or join himself with the King's Enemies, and there (in such Enmity) shall dye or be slain, this seemeth to be Treason, and to be an Attainder in Law, without any more, &c. by the ancient common Law of this Land; as appeareth, *8 E. 3. Fitz. Dower 106.*

So if a Subject shall join in Battle within the Realm to the King's Enemies, and shall be slain in the Field; by the antient common Law of this Realm he shall forfeit his Lands, Goods and Chattels, and his Blood shall be corrupted, without any other Judgment, for that he himself is the Cause that he cannot come to the Trial of Law in his Life Time. *Pl. 262. a. & 263. a. Vide Stat. 34 E. 3. cap. 12.*

Alien Enemy.

But if an alien Enemy come to invade this Realm, and be taken in War, he cannot be indicted of Treason, but he shall be put to Death by martial Law. *Co. 7. 6. b.* Otherwise it is of an Alien whose

King

Dyer 145.
Vide.

King is in League or at Peace with our King, or who is in this Realm in the Time of Peace, and hath the Benefit of the King's Peace, he shall be indicted or arraigned of Treason, and shall have Judgment accordingly. An *English* Traitor pleading that he is subject to a foreign Prince, shall notwithstanding (upon a *Nihil dicit* recorded) have Judgment as a Traitor. *Dyer* 300.

If any Person shall join the Arms of *England* with his own Arms, it seemeth to be High Treason. See 38 H. 8. *Br. Treason* 2.

If any Person shall counterfeit the King's Arms, or the Arms of this Realm, it is High Treason, as *M. Kitchin* hath it, *fol.* 12.

P. 1. 2.
1 M. 6.
Br. 3. 17.

To counterfeit the King's Great Seal, Sign Manual, Privy Signet or *Seals*. Privy Seal, is High Treason. 23 *Ed.* 3. *cap.* 2. and 1 *Mar.* 6. But before the Statute 25 *E.* 3. these were Petty Treason by the Common Law. *Fi.*

So to take an old Seal from another Patent, &c. and put it to a new Patent, &c. yet *quare* whether this be Treason, or but Misprision. *M. Stamf.* *fol.* 3. c. saith, that it was adjudged to be Treason in his Time. *Vide ibidem.* And so said Sir *H. Teloerton.* *Roll,* *part* 2. *p.* 51.

“ One counterfeited the Crown in the Signet, and left out divers
“ Words of the King's Stile, and added some others that were not in
“ the Stile of Purpose that there might be a Variance between them;
“ yet it was adjudged that this was a Counterfeiting by putting this
“ false Seal to the Paper, and thereby getting the Great Seal to a Pa-
“ tent. *Robinson's Case.* *M.* 16 *Jac.* *Roll's R.* *part* 2. 50.

Also it is Treason in such, as without Authority shall set the King's Seal upon any Writing, *Speculum Just.* See *Bracton*, *lib.* 3. *fol.* 119. b.

Quere, of such as shall fraudulently thrust a Writing (among others) to the Seal, and so get it sealed.

To counterfeit the King's Money (*sc.* the Coin of this Realm, or such as by the King's Authority is coined within this Realm or within the Dominions thereof) is High Treason. *Stamf.* 3. c. 25 *E.* 3. *cap.* 2. § 6.
Money.

“ And the Justices of Peace may enquire thereof, and thereupon
“ may make out Process, by *Capias* only, against those which before
“ them shall be hereof indicted. 3 *H.* 5. *cap.* 7.

So to counterfeit any other Coin of any other Realm, which (by the King's Proclamation, or by Act of Parliament or Permission) is made current within this Realm, is High Treason. 1 *Mar.* *Par.* 1. *cap.* 6. *Co.* *L.* 208.

So to forge or counterfeit such Coin, though he uttereth it not. *Stamf.* 3. d.

“ And these Counterfeittings are where any common Person shall
“ Coin any such Money without the King's Warrant.

Br. 27.

P. 4.

14 El. 3.

5 El. 11.

18 El.

P. 5. 6.

To forge or counterfeit any Coin which is not current in this Realm, is Misprision of Treason.

To clip, wash, round, file, impair, diminish, lighten or falsify any Coin or Money of this Realm, or any other Realm, allowed or suffered to be current within this Realm, is Treason. *Bracton* 119.

1 & 2 P.

& M. P. 3.

25 E. 3. c. 2.

Finch.

To bring from beyond the Sea, into this Realm, any false or counterfeit Coin or Money made in any other Realm, like to the Coin of this Realm (or like the Coin of any other Realm, being current within this Realm) knowing it to be false, to the Intent to merchandise therewith or to make Payment thereof, in Deceit of the King and his

People, is High Treason: But to bring such Money into *England*, out of *Ireland*, is but Misprision, though he knoweth it, and uttereth it, *Quia Hibernia est quasi membrum Angliae.*

If he, which by the King's Warrant doth coin Money (either in *England*, *Ireland*, or elsewhere) making it much less in Weight than the antient Ordinance; or coineth false Metal, it is Treason. *Br. Treason 19.* 3 H. 7. 10.
Br. 19.
3 H. 7. 10.

So to coin any Money, not having Authority or Warrant to do it, is High Treason. *Speculum Justic.*

To coin Farthing-tokens is no Treason, but is punishable; and so Sir Francis Harvey delivered it in his Charge at Cambridge Summer Assizes, *Ann. 1631.*

To utter false Money made within the Realm, or other the King's Dominions, knowing thereof, is Misprision of Treason. 3 H. 7. 10.
Dyer 266.

The Book called the *Mirror of Justices*, (or *Speculum Justiciariorum*, written by Mr. Andrew Horn) divides these former Treasons into two Sorts, *sc. Le Crime de Majestie, & le Crime de Fausonnerrie.* See also *Br. fol. 118.*

<i>Le Crime de Majestie. 3. x.</i>	{	Such as shall kill the King, or shall compass to do it.
		Such as shall do or procure any Thing, <i>ad seditionem Domini Regis vel Exercitus sui.</i>
		Such as shall deflower the King's Wife, his Daughter, or the Wife of the King's Heir.

Le Crime de Fausonnerrie is Falsifying the King's Seal, in two Manners, *sc. by* Falsifying his Money.

§ 7. Also to kill the King's Chancellor, Treasurer, Justices of either Bench, Justices in Eyre, Justices of Assize, or Justices of Oyer and Terminer, being in his or their Place, doing his or their Office, is High Treason. 25 Ed. 3. 2.
P. 1.

But because many other like Cases of Treason might happen, &c. it was (by the Stat. 25 E. 3. cap. 2.) accorded, That if any other Case supposed Treason, which is not in that Statute specified, doth happen before any Justices, the Justices are not to proceed thereupon, until the Cause be declared before the King and his Parliament, &c.

Also by the Stat. of 1 Mar. Parl. 1. & Sess. 1. it is ordained, That no Act, Deed or Offence, made Treason, Petty Treason or Misprision of Treason, by any Act of Parliament or Statute, shall be taken, deemed or adjudged to be High Treason, Petty Treason or Misprision of Treason, but only such as be declared to be Treason, Petty Treason or Misprision of Treason, in or by the Statute made 25 E. 3. or any Statute made before or after the said Statute of 25 E. 3. or any other Declaration or Matter to the contrary notwithstanding.

§ 8. Note, That the Counsellors, Procurers, Consenters, Abettors and Accessory. Aiders to any of the forenamed Treasons, be all within the Compass and Danger of High Treason; for in Treason all the Offenders be Principals. Stamf. 5.
P. 2, 3, 4,
5, 6.
19 H. 6.
476.
P. 8.
18 & 2 P. &
M. c. 10.

To conceal or keep secret any High Treason, is Misprision of Treason, 1 E. 6. c. 12. 5 & 6 Ed. 6. c. 11. and 1 El. cap. 6. *sc.* when a Man shall conceal it, and not discover it to the King, or to some of the

the King's Council, or to some other Magistrate. What the antient;
¶ See *hic postea*, out of *Br. lib. 3. & scribe hic*.

Also all Receivors and Accessories (to High Treason) after the
 Offence, seem to be in Case of Misprision, yet by some they be all
 Principals. *Vide postea tit. Accessory, cap. 18.*

To set at large unlawfully, any Person that is committed to Pri-
 son or Custody for Treason, is Treason by the Common Law. See
 1 H. 6. fol. 5. *Br. Treason* 11.

“ If a Man that is *Non compos mentis*, do any Act which if done
 “ by a Man of sound Mind were Treason; it is Treason in him also.
 “ *Roll's Part 2. p. 324.*

If one that is in Prison for Felony shall break the Prison, whereby
 a Traitor being in the same Prison shall escape, this is Treason (in him
 that broke the Prison) by the Common Law. *Vide 1 H. 6. 5.* §. 9.
Prison.

So voluntarily to suffer any Person to escape, that is committed to
 Prison, or but under arrest for Treason; this is Treason by the Com-
 mon Law. *Stamf. 32. 1.*

Dyer 58. If Two or more do conspire to commit High Treason, and some or
Co. 1. 28. any one of them after do commit and execute it; this is High Treas-
 on in them all by the Common Law.

Co. 8. Præ. Note also, that the aforesaid Statute of 25 E. 3. cap. 2. is but a
 Declaration of the Common Law, for all the said Treasons in the
 said Statute mentioned, were Treason by the antient Common Law
 of this Realm.

Since which Time of King *Edw. 3.* divers other Offences were made
 Treason, as appeareth by the Statutes 22 *Rich. 2.* 2 H. 5. 6. 3 *Hen. 5.* §. 10.
Treason by
Statute.
 6. 8 H. 6. 4 H. 7. 18. 22 H. 8. 9. 26 H. 8. 13. 27 H. 8. 2. 28 H. 8. 10.
 & 18. 31 H. 8. 8. 32 H. 8. 25. 33 H. 8. 21. 35 H. 8. 1. & 1 Ed. 6. 12.
 all which were repealed again by the said Statute made 1 M. Parl. 1.
 or before, as is aforesaid.

Also since the aforesaid Statute of Repeal, there have been divers
 other Offences made or declared to be Treason, whereof some were
 but as an Addition to, or an Exposition of the Treasons before speci-
 fied, and mentioned in the said Statute of 25 E. 3. c. 2. viz. the Sta-
 tutes 1 M. 6. 1 & 2 P. & M. 11. 5 El. 11. 18 Eliz. 1. and 14 Eliz. 3.
 by which five several Statutes last mentioned the Counterfeiting of the
 King's Seal, or Abusing his Coin, and Bringing in of false Coin, &c.
 are in some Particulars more fully prohibited than before, as may
 herein before appear. Seal and
Money.

There are also other Offences made High Treason (by Stat. made
 since the Beginning of the Reign of Queen *Elizabeth*), and those e-
 specially made for the Preservation of the said Queen, her Heirs and
 Successors, and of the Dignity of the Imperial Crown of this Realm;
 and for the Avoidance of the Dishonours, Inconveniences and Dan-
 gers growing to the whole State, by Means of the Jurisdiction of the
 See of *Rome*, heretofore usurped within this Realm, &c. as hereun-
 der appeareth.

El. 1. First, the Maintaining or Extolling the Authority of the Bishop or §. 11.
The Bishop
of Rome.
P. Rome 1. See of *Rome*, within any the King's Dominions; and the Procurers,
 & *1 El. 1.* Counsellors, Aiders and Maintainers thereof and every of them.

For the first Offence they shall incur the Danger of a *Premunire*;
 the second Offence is High Treason. “ But no Person shall be ten-
 “ dred the Oath the second Time; but such as have an Office or Mi-
 “ nistry, in the Church under a Bishop or Archbishop, or Persons re-
 “ fusing

“ fusing to observe the Offices of Divine Service after Admonitions, or
 “ Depraving the Rites and Ceremonies of the Church, or that shall
 “ hear or say Mass. 5 *El.* 1.

Books.

Also the Bringers over of any *Books*, that shall maintain, set forth,
 or defend any such Authority; and the Readers and Hearers of such
Books, that shall justify them;

And such as shall deliver any such *Books* to others, with Allowance
 and Liking of the same.

And the Printers and Utterers of such *Books* within this Realm; all
 and every such Offenders are (by the Judges) resolved and construed to
 be within the Meaning of the same Stat. 5 *El.* c. 1. and their first Of-
 fence to be a *Premunire*, the second is High Treason. Dyer 282.
Co. 7.
Præf.

*Oath of
Supremacy.*

Again, the Refusal of the Oath for the King's Supremacy (in all
 Cases, and over all Persons, &c.) after lawful Tender thereof made; 5 *El.* 1.
P. Crown.
6 & 8.
 the first Refusal is a *Premunire*, the second is High Treason.

“ The Justices of Peace, &c. may in their Quarter-Sessions inquire
 “ of all Things done against 5 *El.* 1. as of Offences against the Peace,
 “ and may certify such Presentment into the King's Bench within for-
 “ ty Days after such Presentment made, if in Term-time; or if not,
 “ then the first Day of the next Term, or shall forfeit 100 *l.* and the
 “ Justices of the King's Bench may hear and determine the Offence, as
 “ if the Person offending had been presented upon any Matter in the
 “ Statute of 16 *R.* 2.

The second Refusal of the Oath of Allegiance, being tendred ac-
 cording to the Statute, is a *Premunire*, &c. 7 *Jac.* c. 6. 3 *Jac.* 4.
P. Recus.
45

“ Where the first Tender is before two Justices, and a Refusal
 “ thereupon, the Refusal in Sessions after incurs a *Premunire*, but it
 “ seems by 3 *Jac.* 4. a Refusal in Sessions without any precedent Ten-
 “ der makes a *Premunire*.

Bulls.

Again, to obtain or get from *Rome*, or from any claiming Autho-
 rity from thence, any Bull or Writing, (the Effect whereof is, to ab-
 solve and reconcile all those that will forsake their due Obedience to
 the King, and yield themselves to the Bishop of *Rome*), or to give or
 take Absolution, by Colour of any such Bull; or to grant or pro-
 mise any such Absolution or Reconciliation; or to use, publish, or
 put in Ure any such Bull; every such Act shall be High Treason, as
 well in the Offenders, as in the Procurers, Abettors and Counsellors
 to the Fact. 13 *El.* 2.
P. Crown.
P. Prem. 5.

“ If any Persons shall obtain or get from the Bishop of *Rome*, or
 “ any his Successors or See of *Rome*, any Manner of Bull, Instrument
 “ or Writing, written or printed, containing any Matter or Thing
 “ whatsoever; or shall publish or put in Ure any such Bull, Instrument
 “ or Writing; the Offender shall be adjudged guilty of High Treason,
 “ and forfeit accordingly.

And all Aiders, Comforters and Maintainers of any such Offender, *Ibid.*
 after the Fact, shall incur a *Premunire*.

To conceal such Bull (or Writing) or such Absolution offered them,
 and not within six Weeks to disclose it to some of the King's Privy
 Council, is Misprision of Treason. 13 *El.* 2.
P. Rom. 4.

§. 12.
*Premu-
nire.*

To purchase or pursue (in the Court of *Rome*, or elsewhere) any
 Excommunication, Bull or other Instrument, against the King, his
 Crown, or Realm; or to bring them within this Realm; or to re-
 ceive them, or to make Notification or any other Execution thereof,
 within this Realm, or without, every such Offender, their Procurers,

Main-

Maintainers, Abettors and Counsellors, shall incur the Danger of a *Premunire*. 16 R. 2. cap. 5.

34 El. 1. To practise (beyond the Seas or upon the Seas, or elsewhere within
3 Jac. 4. the King's Dominions) to absolve, perswade or withdraw any Subject,
P. Rom. 7. or any within any his Highness's Dominions, from their Obedience to
23 El. 1. his Majesty; or to reconcile them to the Pope, or to draw them to
the *Romish* Religion (by Argument, Books or otherwise) for that In-
3 Jac. 4. tent; or to move them to promise Obedience to the See of *Rome*, or
to any other Prince, State or Potentate; every such Person, and their
Procurers, Aiders, Counsellors and Maintainers, knowing the same,
are all guilty of High Treason.

23 El. 1. To be willingly absolved, perswaded, withdrawn or reconciled, as
3 Jac. 4. aforesaid, or to promise any such Obedience, every such Person, and
P. Recus. 49. their Procurers, Counsellors, Aiders and Maintainers (knowing the
P. Rom. 7. same) shall be adjudged Traitors, except they submit themselves, ac-
P. Rom. 8. cording to the Statute, within six Days after their Return into this
Realm, &c. *Vide antea tit. Recusants.* "Except in Cases of Treason
and Misprision. 23 El. 1.

To conceal any such Offence, and not within twenty Days to dis-
close it to some Justice of Peace or other higher Officer, is Misprision
of Treason by the Stat. 23 El. 1. P. Rom. 8.

27 El. 2. Again, for any Jesuit, Priest, or other Ecclesiastical Person (born
P. Jesuits 2. within any the King's Dominions) and made by an Authority from the
Bishop of *Rome*, to come into, be or remain, in any of the King's Do-
minions, contrary to the Statute, is High Treason. § 13. Jesuits.

P. Jesuits 2. 101. To receive, relieve, aid or maintain any such Jesuit, &c. (being at
Liberty, and knowing him to be a Jesuit, &c.) is Felony, without Be-
nefit of Clergy. 27 El. cap. 2. "But that Clause relates to such as
"had before that Time taken Orders. See the Statute.

To conceal such a Jesuit, &c. *sc.* not to discover them to some Ju-
stice of Peace, or other higher Officer, within twelve Days, is punish-
able by Fine and Imprisonment.

27 El. 2. And the Justice of Peace or other such Officer, to whom such a Per-
P. Jesuits 4. son shall be discovered, if within twenty-eight Days they give not In-
formation thereof to some of the King's Council, &c. they shall for-
feit 200 Marks. See *plus, tit. Recusants.*

Consilium. The Pope's Bulls in *Latin* called *Bulle*, are so called, *Quod Bul-
lis plumbeis obsignentur*; and in which *consilium & voluntas Papae
continentur*.

What the antient Law was for concealing of High Treason, *Bract.
lib. 3. fol. 418.* Sheweth us, saying, *Si sit aliquis, qui aliam noverit
inde esse culpabilem, &c. statim & sine interuallo aliquo accedere de-
bet ad ipsum Regem, si possit, vel mittere (si venire non possit) ad a-
liquem Regi familiarem, & omnia ei manifestare per ordinem;*
And he must not stay in any one Place by the Space of two Nights
or Days: And if he be negligent therein, he shall be taken as con-
senting. See more, Misprision, *cap. seq.*

27 El. 2. If any of the King's Subjects (not being a Jesuit or Ecclesiastical Per-
P. Jesuits 4. son) which are or shall be brought up in any Seminary or College of
Jesuits, or Seminary beyond the Sea, shall not (within six Months
after Proclamation in that Behalf to be made in *London*, &c.) return
into this Realm, and within two Days after such Return (before the
Bishop of the Diocese, or two Justices of Peace of the County where
he shall arrive) submit himself to the King's Laws, and take the Oath
of

of Supremacy, (set forth 1 *El.* 1.) then every such Person which shall otherways return, or come into this Realm, or any other his Majesty's Dominions, without such Submission, shall be adjudged a Traitor.

For (as one saith) it may justly be feared, not only of all Jesuits and Seminary Priests, but also of all such other (jesuited) Persons whatsoever that shall come into his Majesty's Dominions, or return into this Realm, contrary to this Statute, That it is not Faith, but Faction; not Truth, but Treason; no Religion, but Rebellion, which is the Cause of their Coming.

To convey, deliver or send, yield or give any Relief, to or for any Jesuit or Priest, &c. or other Person abiding in any Seminary beyond the Seas, &c. is a *Premunire*. 27 *El.* 2.
P. Jesuits
5.

Agnus Dei.

To bring into this Realm any *Agnus Dei*, Crosses, Pictures, Beads or such like superstitious Things, consecrated by Authority from the Pope, and to deliver them, or to offer or cause them to be delivered, to any Subject of this Realm, is a *Premunire*, as well in such Person, as also in them that shall receive any such Thing, to the Intent to use or wear it. 13 *El.* 2.
P. Rom. 5.

The Person to whom such *Agnus Dei*, &c. shall be offered, must apprehend the Party offering the same, and bring him to the next Justice of Peace, if he can; or else must within three Days disclose his Name and Place of Abode, to the Ordinary or some Justice of Peace in that County: And if he received any Thing, he must deliver the same within one Day to a Justice of Peace of that County, where the Party so receiving the same, shall then be resident or happen to be; and so doing shall be pardoned. And that the Justice of Peace within fourteen Days must disclose the same to one of the King's Majesty's Privy Council, upon Danger of a *Premunire*. 13 *El.* 2.
P. Rom. 6.

The former Offences against the Statute 5 *Eliz.* 1. and 13 *Eliz.* 2. and 23 *El.* 1. may also be enquired of by the Justices of Peace in the Sessions. *Vide Eliz. cap. 1. & hic cap. 20.*

Persons indicted for High Treason, or for Misprision of Treason, shall have a true Copy of the whole Indictment, but not the Names of the Witnesses, five Days at least before the Trial, paying for it not exceeding 5 s. 7 Will. 3.
cap. 3.

Allowed Counsel and Witnesses on Oath.

And they shall be admitted to make their Defence by Counsel, and by Witnesses on Oath, the said Counsel not exceeding Two, to be assigned by the Court, and to have Access to the Prisoner at reasonable Times.

** No Evidence shall be given of an Overt Act not expressly laid in the Indictment.*

There must be two lawful Witnesses to the same Overt Act, or one of them to one * Overt Act, and the other of them to another Overt Act of the same Species of Treason, unless the Prisoner confess the same in Court, stand mute, or refuse to plead, or challenge above 35 Jurors.

Traitor outlawed.

A Traitor outlawed may come in and be tried, and have Benefit of the Act, where by Law an outlawed Person comes in.

Two distinct Treasons in one Indictment.

Where two distinct Treasons are laid in one Indictment, one Witness to one, and another Witness to the other of the said Treasons, shall not be two Witnesses to the same Treason.

Prosecution within 3 Years.

The Prosecution must be within three Years after the Offence committed, unless for a Design to assassinate and poison the King.

The

The Prisoner shall have a Copy of the Panel two Days before his Trial, and he shall have the like Process of the Court to compel his Witnesses to appear, as is usually granted to compel Witnesses to appear against him. Copy of the Panel.

Indictment shall not be quashed for mis-reciting, mis-spelling, false or improper Latin, unless the Exception is made in Court before any Evidence given; but a Judgment may be reversed by a Writ of Error. Indictment shall not be quashed for Insufficiency. Judgment may be reversed by a Writ of Error.

All the Peers who have a Right to sit and vote in Parliament, shall be summoned at least twenty Days before the Trial of a Peer or Peerefs for High Treason; and every Person so summoned and appearing, shall vote at such Trial, first taking the Oaths of Allegiance and Supremacy, and repeating the Declaration against Transubstantiation. Trial of a Peer.

This Act shall not extend to Impeachments or other Proceedings in Parliament, nor to Treasons in counterfeiting the Coin, the Great Seal, &c. The Act doth not extend to Impeachments, or to counterfeiting the Coin.

No Person shall buy or sell any coining Instruments, or to make Grainings round the Edges of Money, or to gild or plate the Coin under Pain of High Treason. Coining Instruments.

13 &c 14 Will. 3. cap. 3. The pretended Prince of Wales stands convicted and attainted of High Treason, and if any of the King's Subjects shall correspond with him, either in Person, or by Letters or otherwise, or with any Person employed by him, knowing the Person to be so employed, or shall remit any Sum of Money, knowing it to be for his Use; this is Treason. Pretended Prince of Wales attainted.

And if any Offence against this Act shall be done out of England, it shall be tried in any County here.

1 Annæ, cap. 9. Witnesses in a Trial for Treason or Felony shall be admitted to give Evidence on Oath. Witnesses on Oath.

1 Ann. cap. 17. He who opposes the Succession to the Crown, after the Death of the Queen, according to the several Acts of Limitation of the Crown, and shall maliciously, advisedly, and directly attempt it by any Overt Act or Deed; such Offender, his Abettor, Procurer and Comforter, knowing the said Offence to be done, shall be guilty of High Treason. Opposing the Succession after the Death of the Queen.

6 Ann. cap. 7. He who maintains the Pretender's Title, or affirms that the King or Queen, by Authority of Parliament, cannot limit the Succession of the Crown, shall be guilty of High Treason. Maintaining the Pretender's Title.

6 &c 7 Will. 3. cap. 17. He who apprehends a Person who hath counterfeited the current Coin, &c. or for Gain hath clipp'd, washed, filed, or diminished the same, or who hath imported any clipp'd, false or counterfeited Money, and prosecutes such Offender to Conviction, shall within a Month after receive of the Sheriff of the County 40 l. upon Demand, Apprehending a Certificate under the Hand of the Judge who tried the Offender, certifying the Conviction of such Traitor, and that he was taken and prosecuted by the Person claiming the Reward; and if there should be any Difference amongst the Claimants where there are more than one, the Judge, &c. shall settle the same; and the Sheriff failing in Payment of the Reward, shall forfeit to the Party grieved double Clipping and coining Money. Apprehending a Clipper, &c. shall have 40 l.

double that Sum, with treble Costs to be recovered by Action of Debt in the Courts at *Westminster*.

Making or mending any coining Tools. None, (except Persons employed in his Majesty's Mint, or authorized by the Treasury) shall knowingly make or mend any Die, Puncheon, Counter-puncheon, Matrix, Stamp, Pattern or Mould, &c. in or upon which there shall be impressed the Figure or Resemblance of both, or either Side of the current Coin of this Realm, nor make or mend, or beginning or assisting to make or mend any edging Tool, Instrument, (not of common Use in any Trade) but contrived for marking Money round the Edges with Letters, Gravings, or other Marks of Figures resembling those on the Edges of Money coined in the King's Mint, nor any Press for Coinage, or any cutting Engine, for cutting round Blanks by the Force of Screws, out of flatted Bars of Gold, Silver, or other Metal; nor knowingly buy or sell, hide or conceal or (without lawful Authority or just Excuse) have in his Custody any Puncheons, or other the Instruments before-mentioned, on Pain that they, their Counsellors, Procurers, Aiders and Abettors, shall be guilty of High Treason. 8 & 9 Will. 3. cap. 26. made perpetual by 7 Ann. cap. 25.

Concealing or having them in their Custody.

Conveying Tools out of the Mint.

Making Letters or Grainings.

Prosecution within six Months

He who (without Authority) shall convey out of the King's Mints any of the aforesaid Instruments; and all Persons receiving, hiding or concealing them, are guilty of High Treason.

He who makes Letters or Grainings, or other Marks or Figures like those on the Edgings of Money coined at the Mints, and Colouring, Gilding or Casing over any Coin resembling the current Coin of this Kingdom, or any round Blanks of base Metal, or of coarse Gold or Silver of a fit Size and Figure to be coined into counterfeit mill'd Money, resembling the said gold or silver Coin, or shall gild over such silver Blanks, &c. shall be guilty of High Treason.

Persons offending against the last mentioned Act, may be prosecuted at any Time within six Months after the Offence committed. 1 Ann. cap. 9.

The Act aforesaid, 8 *Willi.* made for the better preventing current Coin of this Realm, made perpetual. 7 Ann. cap. 25.

C H A P. CXLI. *Vide* XC.

Misprision.

Misprision signifieth in our Law, Neglect, Negligence or Oversight, in not revealing a Treason or Felony, when we know it to be committed, or about to be committed; so making a light Account of such capital Offences: See *infra*; and see High Treason, the Stat. 13 *Car. 2. cap. 1.*

There be certain Offences, which by the Common Law are Misprision of Treason, or at least punishable in the same Degree, or in an higher Degree. As,

To draw a Sword to strike a Justice sitting in the Place of Judgment, is Misprision of Treason. So 22 E. 3. 19. Stamf. 38. b.

To strike a Juror in the Presence of the Justices, sitting in Place of Judgment. *Br. Contempts 9. Fitz. Judg. 174. Fi.* P.R. 117. Ibid.

So to strike another in *Westminster-Hall*, sitting on any of the King's Courts there. *Dyer 188. Fitz. Cor. 285. F.* Stamf. 38. c.

So to draw any Weapon (therewithal to strike any Person in the Presence of the Justices, or to make an Affray in their Presence. *Br. Pain* 16. *Stamf.* 38.

So to rescue any such Offender. *Ibid.*

So to strike any Person in the King's Court (Palace or other House) the King being then in his Court. And Judgment was given accordingly in such Case upon a Knight, *Ann.* 33 *H.* 8. for striking another at *Greenwich*, the King being there. *Br. Ibid.* Yet now see the Stat. of 33 *H.* 8. 12. That such an Offender in the King's Palace (although he shall draw Blood by Striking there) he shall forfeit neither the Profits of his Lands, nor his Goods, but shall lose his right Hand, be imprisoned during his Life, and shall pay Fine and Ransom at the King's Pleasure: And so now such an Offence done in the King's Palace, shall not have so grievous a Punishment, as if it be done in *Westminster-Hall*. See *Stamf.* 38. d.

Ibid. But in the former Cases, the Offender shall have Judgment as in Misprision of Treason, and besides shall have his right Hand cut off. *Br. Peine* 16. *Fitz. Forf.* 21. *Dyer* 188.

Ibid. If one of the King's Justices do arrest one, who made an Affray before him sitting in Place of Justice, and a Stranger shall rescue the Prisoner, whereby he escapeth; this is Misprision of Treason in them both, for that the Arrest by the Justice was (in Law) the Arrest of the King himself.

Stamf. 37. Note, that every Treason or Felony does include Misprision, so that where any Person hath committed Treason or Felony, the King may cause the Offender to be indicted and arraigned but of Misprision.

Misprision is properly, when one knoweth that another hath committed or is about for to commit any Treason or Felony, but was not, or is not consenting thereto, and will not discover the Offender to the King or his Council, or to some Magistrate, but conceals the Offence. *Stamf.* 37. *Stat.* 5 *E.* 6. c. 11.

Stamf. 37. Compounding of Felonies, is also Misprision of Felony at the least, if it be not Felony.

For Misprision of Treason, the Offender shall forfeit to the King his Goods and Chattels for ever, and the Profits of his Lands during his Life, and also shall be imprisoned during his Life. *Br. Trea.* 19. and *Stamf.* 38.

For Misprision of Felony, the Offender shall be only fined (and ransomed) by the Justices, before whom he shall be attainted, and shall be committed to Prison until he hath paid his Fine. See *Br. Trea.* 25. and *Finch. lib.* 2.

3 *H.* 7. f. 10. For High Treason, the Offender being a Man, shall be drawn upon a Hurdle unto the Place of Execution, and there shall be hanged by the Neck, cut down alive, and his Intrails and Privy Members shall be cut from his Body, and be burnt within his View; and then his Head shall be cut off, and his Body quartered, and then to be disposed of at the King's Will.

Vide Co. L. 13. 3. & 37. Also he shall forfeit all his Lands and Goods to the King; Yea, at this Day (by the Stat. made 26 *H.* 8. c. 13. and 5 *Ed.* 6. c. 11.) his Lands entailed shall be forfeited, and his Wife shall lose her Dower (saving in certain Cases) *Vide Stamf.* 182. & 187. *Co.* 1. 103. 3. 10. & 7. 33, 34. & *Dyer* 289. & 332. *Pl.* 237. b. 249. b. 554. b. & 559. *Est enim tam grave crimen istud quod vix permittitur heredibus quod vivant: Et si aliquando forte ad successionem admittuntur tales, hoc magis erit de gratia quam de jure.* *Br. lib.* 3. fol. 118.

Woman. But the Judgment and Sentence of Condemnation upon a Woman in Case of Treason is, that she shall be drawn upon a Hurdle unto the Place of Execution and there burned. *Stamf.* 182. c.

Premunire. "If any shall bring his Action against one for making any kind of ^{13 Ca. 2.} Purveyance contrary to ^{c. 24.} 12 Ca. 2. c. 24. And any other after Notice, that the Action is grounded on that Statute, shall procure it to be delayed or stayed before Judgment by Colour of any Order, Power, Warrant, or Authority, save only of the Court where that Action is depending, or after Judgment shall cause or procure Execution to be delayed or stayed by any Order, Warrant, Power, or Authority; save only by Writ of Error or Attaint, or Order of that Court where such Writ of Error or Attaint is depending, the Person offending shall incur a *Premunire*.

In Case of *Premunire*, the Offender (being attainted upon the Statute of 16 Rich. 2.) shall forfeit all his Lands which he hath in Fee for ever, and all his Goods and Chattels, to the King; but his Lands, whereof he hath an Estate-tail, he shall forfeit only during his Life; and shall be imprisoned during his Life. But some do hold, that if the Offender be attainted upon the Stat. of 27 Ed. 3. cap. 1. there the Offender shall forfeit nothing, if he appeareth at the Day of the *Premunire* returned. See the Stat. & B. *Prem.* 6. & *Crompt. Aucter dert cots* 97. Yet others do hold, that as upon the Statute of 16 R. 2. cap. 5. the Offenders shall forfeit their Lands and Goods if they be attainted (*Br. Prem.* 6. & 20) so upon the Stat. of 27 E. 3. if the Offender do appear and plead, and be found Guilty, he shall have the Judgment of *Premunire*, *sc.* to be put out of the King's Protection, and shall forfeit his Lands, Goods, and Chattels to the King, and his Body shall be imprisoned during his Life, (or until he hath made fine and Ransom at the King's will.) See the Stat. and Co. 11. 34. and the old *Natur. Bre. fol.* 159. Co. L. 130, & 391.

The Judgment in Premunire.

Now for the Offenders in High Treason, Misprision of Treason, and *Premunire*, although the Justices of Peace (by their Commission, nor by Stat.) cannot meddle with them in the very Point of their Offences, saving in some Particulars, and that by way of Inquiry only, which you may see *hic antea* Tit. *Felony*. Yet for that all Treasons, and such other Offences are against the Peace of the King, and of the Realm, therefore upon Complaint made to the Justice of Peace, or other Knowledge had by him of any such Offenders, it shall be his Part to cause them to be apprehended, and to join with some other Justice of Peace in taking their Examination, and the Information upon Oath of such as bring them, or of others that can prove any Thing material against them, and to put the same in Writing (under the Hands of the Informers) and then to commit the Offenders to the Gaol; and also to bind over by Recognizance, all such as do declare any Thing material, to appear and give Evidence against such Offenders, before the Privy Counsel, or in the King's Bench, or at the Assizes and Gaol-delivery, or elsewhere, when they shall be called upon reasonable Warning, and after to certify their Doings therein to some of the Lords of his Majesty's Council.

Note, that all Treasons, Misprision of Treason, and Concealment of Treason, done or committed out of the Realm, shall be inquired of, and tried within the Realm, *sc.* in the King's Bench, or else before special Commissioners. See Stat. 35 H. 8. cap. 2. & 5 E. 6. cap. 5.

cap. 11. P. Treas. 18. & Dyer 287, 298, 132, 360. Co. 7. 23. & 11, 63.

C H A P. CXLII. Vide XCI.

Petty Treason.

^{25 E. 3. c. 2. P. Treas.} **P**etty Treason is, when wilful Murder is committed (in the E- §. 1.
state Oeconomical) upon any subject, by one that is in *subjection* Defined.
on, and oweth *Faith, Duty, and private Obedience to the Party*
murdered, as in these Cases following.

^{Ibid. & 10. 11. aff. 30.} If a *Servant* maliciously killeth his or her *Master or Mistress*, this §. 2.
was Petty Treason by the Common Law. *Stamf.* 10. 1. *Br.* 8. 12. By a Ser-
& *Co.* 11. 34. & 25 *E.* 3. cap. 2. vant.

^{Ibid. Fitz. Co. 118.} A *Servant* of the Age of thirteen Years killed her *Mistress*; it was
adjudged Petty Treason. *Br. Treas.* 12.

^{Stamf. 10.} A *Servant* departed out of Service, and a Year after killeth his
Master upon Malice conceived when he was in the said Service; it is
Petty Treason. *Br. Treas.* 151. 33 *Aff.* 1. 7. *Co.* 1. 99. b.

^{Cromp. 19. 20. a.} A *Servant* doth procure another to kill his Master, who killeth him
in the *Servant's* Presence; this is Petty Treason in the *Servant*, and
Murder in the other. See *Plo.* 100. a. & *Br. Cor.* 119. & *Quare.*

^{Dyer 228.} But if the *Stranger* doth kill the Master in the *Servant's* Absence,
then the *Servant* is only accessory to the Murder, but it is no Petty
Treason in him.

^{Dyer 128.} A *Servant* conspireth with a *Stranger* to rob his Master, and at a
Time appointed in the Night, he letteth in the *Stranger* into the
House, and leads him to his Master's Chamber, and the *Stranger* kill-
eth his Master, the *Servant* standing by but saying nothing, this is
Petty Treason in the *Servant*, and Murder in the *Stranger*; yet by
some, this is but Murder in the *Servant*. *Ibid.* & 40 *Aff.* *Br. Cor.* 119.
For where the Principal is but a Felon, the Accessary cannot be a
Traitor. See *Plo.* 100. a. that the *Servant* is a Principal in this
Case, and after, 'Tit. Accessary.

^{Cromp. 20.} A *Servant*, commands one to beat his Master, and he killeth him,
this is Petty Treason in the *Servant*, if he be present.

^{Cromp. 20.} A *Servant* upon Malice premeditated, shooteth at a *Stranger*, and
misleth him, and killeth his Master being by; this is Petty Treason
in the *Servant*, (though he intended no Hurt to his Master) because he
intended Murder thereby.

^{Br. Treas. 301.} The Wife maliciously killeth her Husband, this is Petty Treason. §. 3.
25 *Ed.* 3. cap. 2. The Wife.

The Husband maliciously killeth his Wife, this is but Murder.
The Reason of this Difference is, for that the one is in *Subjection*
and oweth Obedience, and not the other.

^{Dyer 332.} The Wife and a *Servant* do conspire to kill the Husband, and the
Servant killeth him in the Wife's Absence; this is Petty Treason in them
both.

^{Dyer Ib.} The Wife and a *Stranger* do conspire to kill her Husband, and he
killeth her Husband in the Wife's Absence; this is no Petty Treason in
the

the Wife, but Murder in the Stranger, and she shall be hanged as accessory to the Murder.

Also where the Wife or Servant procuring, conspiring, or practising such Murder, at the Time of such Murder is in the same House, though they be not present thereat, but are in another Room, yet it is Petty Treason in them, as by two Cases reported by Master Crompton in 4 & 5 Mar.

The Wife poisoneth a Thing, to the Intent to poison her Husband therewith, the Husband eateth it, and becometh very sick thereof, but recovereth; after a Stranger eateth thereof, and dieth thereof, this is only Murder in the Wife. Plo. 474. Co. 9. 81. See more in the Title of Murder. Crom. 10.

The Wife poisoneth an Apple, to the Intent to poison a Stranger therewith, and layeth it to that Purpose in a secret Place, and the Husband by chance eateth it, and dieth thereof within a Year and a Day, this is Petty Treason in the Wife, for that she intended Murder thereby.

The Wife poisoneth an Apple or other Thing, and delivereth it to B. (knowing nothing of the Poison) to give to C. and B. giveth it to the Husband, (without the Assent of the Wife) who eateth thereof in the Wife's Absence, and he dieth thereof, this is Petty Treason in the Wife. Crompt. 20.

And yet if A. lay poisoned Fruit for a Stranger, being his Enemy, and his Father or Mother come and eat it, Sir Fr. Bacon maketh a *Quere*, whether this be Petty Treason, because it is not altogether *Crimen parisi gradus*. But saith he, *in criminalibus sufficit generalis malitia intentionis cum facto parisi gradus*. *Regula 15. pag. 65, 66.*

§. 4. The Child maliciously killeth his Father or Mother, this is Petty Treason (although the Father or Mother at the same Time gave neither Meat, Drink, nor Wages to such Child;) But it is Treason in the Child, in Respect of the Duty of Nature violated. *Vide Ba. 53.* 21 E. 3. 17. Co. 7. 13. b. Br. Treas. 6.

A Bastard killeth his Mother, this seemeth Petty Treason, for the Mother is certainly known. Crompt. 21.

By the Law of God, he that only smiteth, or curseth his Father, or his Mother, shall die the Death. *Ex. 21. 15 & 17.*

The Son or Daughter-in-Law, killeth his Father or Mother-in-Law, with whom they dwell, and have Meat, and Drink; it is Petty Treason, although such Child take no Wages; but the Indictment shall be by the Name of Servant. Dalison's Rep. 2 M. 1.

§. 5. A Clerk, or any Ecclesiastical Person, maliciously kills his Ordinary, or Superior, to whom he oweth Obedience, this is Petty Treason. 2 E. 3. c. 2. Br. P. Treas. 7.

Note, that unto the Bishop of every Diocese, the Clerks within their Diocese do owe Faith and Obedience, which is called Canonical Obedience. *Finch. 137.*

Note further, that whatsoever Act will prove Murder between Strangers, the same will make Petty Treason from the Servant to his Master, from the Wife to the Husband, from the Child to the Father or Mother, and from the Clerk to his Prelate or Ordinary, *Mutatis mutandis.*

Otherwise it is between these Persons, where it is not wilful Murder: As if the Servant should kill his Master upon a suddain Falling out, without any Malice precedent or by Mis-adventure, or

se defendendo, these are not Petty Treason, neither shall the Indictment be *Proditorie*, &c. And so of the Wife or Child.

Stamf. 11. Breaking of Prison, whereby Prisoners that were therein for Treason Break Prison. do escape, this is also Petty Treason. 1 H. 6. 5. Br. 11.

A Norman being Captain of an English Ship, wherein also were certain English-men, and they robbed upon the Sea; this was adjudged Felony in the Norman, and Treason in the English-men, and they were drawn and hanged. 40 Ass. p. 25. Br. Coron. 119. & Treason 16.

But at this Day all Felonies, Robberies, Murders, and Piracies, done upon the High Sea, are to be tried before the Lord Admiral in the Court of the Admiralty, and according to the Civil Law. Or they may be attainted before Commissioners, by Force of the Stat. of 28 H. 8. 15. and then they shall forfeit their Lands, and their Blood shall be corrupted. Co. L. 39.

Stamf. 1. Also it hath been adjudged Petty Treason in some Books, and Felony in some other, for an Indictor (in Case of Treason or Felony) to discover the King's Counsel and their Fellows (*sc.* to discover to others, what Person they have indicted; or if they have indicted any, then to shew to others what they have done therein, and by whose Means, &c.) But now that Offence is taken only to be finable to the King.

1 R. 3. 4. The Punishment of Petty Treason is this; the Man so offending shall be drawn and hanged; the Woman shall be burned alive, in Case as well for Petty Treason, as of High Treason, 1 R. 3. 4. But in Cases of Felonies, the Judgment both of Man and Woman is to be hanged.

Also no Person or Persons (be they Lay or within Holy Orders, &c.) which shall be attainted, or found guilty of any Manner of Petty Treason, nor any Accessory thereto before the Fact, shall be admitted to have the Benefit of his or their Clergy. See the Stat. 12 H. 7. c. 7. 23 H. 8. c. 1. 28 H. 8. c. 1. 32 H. 8. c. 3. 1 E. 6. c. 12. & 4 & 5 Ph. & Ma. cap. 4.

The Forfeiture for Petty Treason is, the King shall have his Goods, and for his Lands the King shall have *annum, diem & vastum*, and the Escheat thereof shall be to every Lord, of his own proper Fee, 25 Ed. 3. cap. 2. But for Petty Treason or Felony, if the Offender hath but an Estate-tail in his Land, he shall forfeit them but during his Life, Stamf. 186, 187. And for Petty Treason, if the Husband be attainted, the Wife shall be barred of her Dower. Co. L. 37.

Plo. 186. The Justices of Peace may inquire of Petty Treason, as of Felony: And out of their Sessions, every Justice of Peace may deal with the Offenders therein, as in Case of Felony, by Examination of the Offenders, by taking Information against them, and binding over the Informers to the General Gaol-delivery, and committing the Offenders to the Gaol.

C H A P. CXLIII. *Vide* XCII.*Of Felonies by the Common Law.*

§. 1. **F**elony, by some this Word is derived, *Quasi felleo animo factum* L. & Co. 4. 124. *Ideo dicta est feloniam, quia fieri debet felleo animo* (with a Mind as bitter as Gall.) *Minus verbo* Felon, saith it cometh of the French Word Felon, *id est, atrox, crudelis: Vel a velando, cum celari & occultari semper velit. Felonia est omne crimen capitale infra lesam Majestatem.*

So in the Law at this Day, under the Word *Felony*, is included ^{3 El. 9.} Petty Treason, Murder, Homicide, Chance-medly, *Se defendendo*, Burglary, Robbery, Theft, Rape, Burning of Houses, Petty Larceny, Rescous, and Escape, &c. Co. L. 391.

“ Thus generally it seems to be taken in many Statutes, as particularly in the Statute of 3 Eliz. c. 9. Where it is said, that all Persons shall be ready and apparelled at the Commandment of the Sheriff, and Cry of the Country, to pursue and arrest Felons: And they that will not so do, and thereof be attainted, shall make a grievous Fine to the King; and if Default be in the Lord of a Franchise, the King shall seise his Franchise. And if any Sheriff, Coroner, or any other Bailiff, for Prayer, Fear, or Affinity, that his Kindred or Relation by Birth, or Marriage, shall conceal, consent, or procure to conceal Felonies; will not do their Offices, and be thereof attainted, shall have one Year’s Imprisonment, and pay a grievous Fine, and if he hath not whereof to pay, shall have three Years Imprisonment.

§. 2. *Homicide* most properly is, *hominis occisio ab homine facta*; for if a Man be killed by a Beast (as a Horse or a Dog) or by any other Thing or Mis-chance, although that be *hominis cadum*, (of which two Words Homicide is derived) yet in such Cases it is not aptly nor usually said, that Homicide is committed, but only a Man is said to be slain. *Bracton* 120.

Others do thus define or describe it, Homicide is the felonious ^{Lamb.} Killing of one Man by another within the Realm, and living under ^{235.} the King’s Protection.

But to kill a Man *beyond the Seas*, or to strike and give one a mortal Wound beyond the Seas or upon the Sea, whereupon he dieth upon the Land (within this Realm) these Homicides are not punishable as Felony by the Common Law; for that they cannot be inquired of, nor tried here; for in criminal Cases, the Rule is, *Ubi quis delinquit ibi punietur*. So Co. 2. 93. 6. 47. But in Treason it is otherwise. See hereof, *Paulo antea*. And yet all Appeals to be made of Things done out of the Realm, shall be tried before the Constable and Marshal of *England*, by the Statute 1 H. 4. cap. 14. So that if any of the King’s Subjects shall be killed by another of the King’s Subjects in any Foreign Realm, the Wife or Heir of him which is so slain, may have an Appeal thereof in *England*, before the Constable and Marshal, &c. *Stamf.* 65. b. *Vide* Co. L. 74.

Also to kill a Man upon the Sea, although it be not triable by the Common Law, yet it is Felony, and is inquirable and triable in the

Ad-

Admiral Court; for those of the Admiralty have Jurisdiction, where both the Stroke and Dying is upon the Sea; otherwise not. And therefore in 25 *El.* it was adjudged in one *Lacy's Case*, that where the said *Lacy* had stricken *Peacock*, and given him a mortal Wound upon the Sea, whereof *Peacock* died at *Scarborough* (in *Yorkshire*;) the said *Lacy* was discharged thereof, for that those of the County of *York* could not enquire of the Death without enquiry of the Stroke; and the Stroke they could not enquire, for that it was not given within any Part of the County. See *Co. 2. 93. & 5. 106, 107. & Stat. 15 R. 2. cap. 3. & 2 H. 5. c. 6.* But yet by the Statutes made *Anno 27 H. 8. c. 4. & 28 H. 8. cap. 5.* all Offences of Piracy, Robbery, Murder, or other Felony done or committed upon the Sea, (or in any other Haven, River, or Creek, where the Admiral pretends to have Jurisdiction) shall be enquired of, heard, tried, and determined in such Shires and Places within the Realm, and before such Persons as shall be limited and appointed by the King's Commission, and after the common Courfe of the Laws of the Land, used for Felonies committed within the Realm; and such as shall be so convict of any such Offence, shall have and suffer such Pains of Death, and Forfeiture of Lands and Goods, as if they were convict of Murder or Felony done upon the Land.

Lamb.
232.

But whether he that hath slain, be an Alien, or a Denizen, an English-man or Stranger, it maketh no Difference (if he live within this Realm under the King's Protection.)

Co. 7. 13.
14.

Crom. 24

To kill a Man that is attainted (by Verdict, or by Outlawry, or otherwise) of any Murder, Felony, or Treason, is Felony: for none may kill or put to Death any of these, but the Officer of Justice, and by lawful Warrant. See *Doct. & Stud. fol. 133. Co. L. 128. b.*

Co. 7. 14.

Also to kill a Man attainted upon a *Premunire*, is Felony at this Day. See the Stat. 5 *Eliz. cap. 1. & Co. 7. 14. Co. L. 130.*

Also to kill a Man that hath abjured the Realm, is Felony. See *Co. 7. 9. b. and the Doct. & Stud. fol. 133.*

For Note, that the King's Protection belongeth by the Law of Nature to all these, and the King may protect and pardon them all.

Homicide is threefold:	{	<i>Voluntate; & est duplex.</i>	{ Murder, <i>scil.</i> of a malicious Purpose.	§ 3. Kinds of Homicide. See a 146.
			{ Man-slaughter, or Chance-medly of a sudden.	
		<i>Casu, or Misadventure; this also is considerable after two Sorts, scil. whether it happen in doing a Thing.</i>	{ Lawful,	
			{ or Unlawful.	
{	<i>Necessitate; this is sometimes</i>	{ Commanded, <i>sc.</i> in Execution of Justice.	{ For Advancem. of Justice. See <i>post.</i> Tit. Homicide.	
		{ Tolerated,		
		{ Prohibited.		
" <i>Bracton</i> divides Homicide into two Sorts,			{ <i>Lingua, vel Facto.</i>	

Lingua, tribus modis. { *Præcepto*
 { *Consilio*
 { *Tuitione* } *de his vid. cap. 108.*

Facto, quatuor }
 modis. }
 1 Voluntate, de qua postea.
 2 Justitia } de quibus postea.
 3 Necessitate }
 4 Casu, de quo postea.

C H A P. CXLIV.

Felo de se.

§. 1.
The Fall.

BUT first to write something of *Felo de se*, 'who destroyeth himself by Hanging, Poisoning, Drowning, or otherwise.

For the Heinousness thereof, it is to be observed, That it is an Offence against God, against the King, and against Nature. Also it is within the Degree or Quality of Murder, *sc.* pretended and resolved (in his Mind) to be done, before it be done: Yea it is holden to be a greater Offence than to kill another Man. *Pho.* 261. & *in hoc casu Christiana sepultura interdicirur.*

And yet the Civil Law maketh a Difference of such Offenders, and of their Punishment, according to the Quality of their Minds, whereby they were moved to kill themselves; for if they kill themselves through Grief or Impatience of some Infirmary, no Punishment followeth such their Fact (by the Civil Law) but they are left to the Tribunal of the Almighty Judge: But if they kill themselves upon any other Cause, their Goods are confiscated, and their dead Bodies (for the Terror of others) are drawn out of the House, &c. with Ropes, by a Horse, unto a Place appointed for Punishment or Shame, where the dead Body is hanged upon a Gibbet; and none may take down the Body but by the Authority of the Magistrate, &c. *Vide Fulbeck* 90. and *Dr. Cowell* 249.

§. 2.
Forfeiture.

But by the Common Law, if a Man kill himself (either with a mediate Hatred against his own Life, or out of Distraction, or other Honour) he is called *Felo de se*; and he shall forfeit to the King all his Goods and Chattels real and personal, and his Debts due to him by Specialty (but no Debts due to him without Specialty, or upon simple Contract. *Dyer* 262. 16 E. 4. 7.)

And their Goods are usually granted and allowed by the King to the Bishop *Almoner*, and in such Sort as *Deodands* are. *Ba.* 3. V.

But he shall not forfeit his Lands, neither shall his Blood be corrupted. See *Fitz. Coron.* 362, & 426. Fl. Cor. 301.

Yet if a Man be guilty of another Man's Death, or manifest Theft, &c. and be taken, and for fear thereof killeth himself; here he shall forfeit his Lands, *ac heredem non habebit.* *Braet. lib.* 3. *cap.* 13. Plo. 261.

If a Man do give himself a deadly Wound, and dieth thereof within a Year and a Day after, all his Goods, &c. which he had at the Time of the Blow given, or any Time after, shall be forfeited to the King. *Pho.* 262. *ad.* Plo. 262.

Yet the Goods of *Felo de se*, be not forfeited till his Death be presented and found of Record, neither can these Goods be claimed by Prescription, (by Lords of Liberties, &c.) but by the King's Grant. Co. 5. 110. 21 H. 7. 33.

And altho' he cannot be attainted of his own Death, for that he is dead before there is any Time to attaint him, yet the Finding of his Death

Death by the Coroner (or other Person thereto authorised) is by Law equivalent to an Attainder in Deed, as to his Goods. *Plo. 258. b.*

44 E. 3. 44.
Fit. Cor.
64

If *A.* strike *B.* to the Ground, and then draweth his Knife to kill *B.* and *B.* lying upon the Ground draweth his Knife to defend himself, and *A.* is so hasty to kill *B.* that he falleth upon *B.*'s Knife, and so *A.* is slain; here *A.* in a Manner is *Felo de se*, and yet he shall not forfeit his Goods in this Case. *Br. Co. L. 12.* See 44 *Aff. p. 17.* *Br. Cor. 12 & 14.* that *A.* was adjudged not to be *Felo de se*.

If *A.* of Malice premeditated dischargeth a Pistol at *B.* and misseth him, and throws down his Pistol and flieth, and *B.* pursueth him to kill him, whereupon *A.* turning, falleth down, his Dagger drawn, and *B.* through Haste falleth upon the Dagger, here *B.* is *Felo de se*, and *A.* shall go quit. 44 *E. 3.* Sir *Fr. Bacon 4. 5.*

If a Caliver be discharged with a murderous Intent at *J. S.* and the Piece breaks, and strikes into the Eye of him that dischargeth it, and killeth him, he is *Felo de se*; and yet his Intention was not to hurt himself: For *Felonia de se*, and Murder, are *Crimina paris gradus.* See *ibid. p. 65.*

And in such Case he shall forfeit his Lands, *quia convincitur.* *Bract. lib. 13. cap. 31.*

Stamf. 19. If one that wanteth Discretion, killeth himself, (as an Infant, or a Man *Non compos mentis*) he shall not forfeit his Goods, &c. *Bract. lib. 13. cap. 31.* *Who may be Felo de se.*

If a Lunatick Person killeth himself, he shall forfeit his Goods, (*Fitz. Coron. 324.*) but this must be understood when he killeth himself out of his Lunacy: Otherwise it is, if he killeth himself during his Lunacy, for then he shall neither forfeit his Goods, nor be counted *Felo de se*.

Co. 4. 129. If one being *Non sana memoria*, or a Lunatick, giveth himself a mortal Wound, and after he becometh of sound Memory, and then dieth of the same Wound, in this Case, although he dieth by Reason of his own proper Stroke, yet for that the original Cause was committed when he was *de non sana memoria*, he shall not be accounted *Felo de se*, neither shall he forfeit any Thing, for that the Death hath Relation to the original Act, the which was the Stroke or Wound given when he was *de non sana memoria.* *Co. 1. 99. b. & 4. 42. a.* *Fitz. Coron. 244. Pl. 260.*

Co. 5. 110. The Inquiry of such a Felony belongeth to the Coroner: And yet if *Felo de se* be cast into the Sea, or secretly buried, that the Coroner cannot have the Sight of his Body, and so cannot inquire thereof; then the Justices of Peace, or any other having Authority to inquire of Felonies, may inquire thereof (for that it is Felony): And a Presentment thereof found before them, intitlith the King to his Goods. *Who shall inquire of*

C H A P. CXLV. Vide XCIII.

Murder.

OF old Time every Killing of one Man by another, was called Murder, (of the Effect) because Death ensued of it. Afterwards Murder was restrained to a secret Killing only; and therefore *Bracton* and *Britton* in their Definition of Murder, calleth it *Occulta occisio nullo presente prater interfectorem & suos coadjutores*, &c. But since Murder

hath been, and is taken in a middle Degree, neither so largely as it first was, nor so narrowly as Master *Bracton* and *Britton* speaketh of it.

Exod. 21. For Murder is now construed to be when one Man upon Malice pre-^{Stamf. 18.}
^{13.} pensed, (*sc.* forethought) or precedent and with his Will, doth kill an-^{Plow. 261.}
^{15.} Numb. 35. other feloniously, *viz.* with a premeditate and malicious Mind, whe-
^{20.} ther it be openly or privily done, this is Felony of Death, without any
^{Deut. 19.} Benefit of Clergy. ²³ *H. 8. c. 1. & 1 Ed. 6. c. 12.* See *Exod. 21. 14.*
^{11.} he shall be taken from the Altar and put to Death.

§. 2. This Malice prepensed or precedent, may be either apparent (as
Malice. where there was a Precedent Falling out, or where there is a Lying in
 Wait, or a Time and a Place appointed, &c.) or it may be less ap-
 parent or manifest, and yet shall be implied, to be of Malice prece-
 dent, by the Manner and Circumstances thereof.

As where one killeth another without any Provocation, the Law ^{Co. 9. 67.}
 implieth, and adjudgeth it to have proceeded of Malice prepensed:
 Therefore if one suddenly, and without any shew of Quarrel or Of-
 fence offered, shall draw his Weapon and therewith kill another.

Or if one shall be Reading some Book, or otherwise busied, so as he ^{Co. 23. 37.}
 saw not the Party that shall stab or strike him (and he dieth thereof);
 or shall be going over a Stile, &c. and another shall kill him; such
 Offenders shall suffer Death, as in Case of wilful Murder.

*Statute a-
gainst
Stabbing.* And accordingly hath the Statute 1 *Jac.* well provided, That if one ^{1 Jac. c. 8.}
 shall stab, strike or thrust another, that *hath not then a Weapon drawn*,
 or hath not then first stricken the other; and if the Party so stabbed,
 stricken or thrust, &c. shall die thereof within six Months after, altho'
 it cannot be proved that the same was done of Malice forethought;
 yet the Offender being thereof lawfully convicted, shall suffer Death as
 a wilful Murderer without Benefit of Clergy.

§. 3. To kill the Sheriff or any of his Officers, in their Execution of the ^{Co. 4. 40.}
Officers. King's Process, or in doing their Office, is Murder in him that killeth ^{& 9. 66. 68.}
 the Officer.

But if he be not an Officer known, he must shew his Warrant, be ^{Co. 9. 69.}
 fore he arrest the Party, or upon the Arrest (if the other shall demand
 to see it) or else it seemeth the Arrest is tortious; and where the Arrest
 is tortious (be it by an Officer known or by another) there the Killing
 of him that maketh such an unlawful Arrest, is no Murder, but Man-
 slaughter only. Again, where an Officer hath the King's Writ or o- ^{Co. 9. 65.}
 ther lawful Warrant, though it be erroneous, yet in the executing
 thereof, if he be slain, this is Murder. ^{Co. 9. 68.}

For the Officer is not to dispute the Validity of his Warrant, or the
 Authority of the Court (or of the Justice of the Peace) that sent the
 Warrant; but his Office is to execute it.

*Magi-
strate.* To kill any Magistrate or Minister of Justice, in the Execution of ^{Co. 4. 40.}
 their Office, or in Keeping the Peace (according to the Duty of their ^{& 9. 68.}
 Office) is Murder in such Offenders, for their Contempt and Disobedi-
 ince to the King and Law; and the Law implieth it to be of Malice
 prepensed. And therefore if the Sheriff, Justice of Peace, High Con-
 stable, Petty Constable, Watchmen, or any other Minister of the King,
 or any that come in their Aid, be killed in doing their Office, this is
 Murder.

If the Sheriff or Justice of Peace come to suppress Riotors, and one ^{22 Eliz.}
 of their Company is slain by one of the Riotors; this is Murder in all ^{Crompt. 25.}
 the Riotors that be there present.

- Co. 4. 42. A Constable, with others to aid him, comes to part an Affray, if the Constable, or any of his Company shall be slain in doing this his Office, it is Murder in him that killed him, although the Affray were on the sudden, and though it were in the Night: For when the Constable commands them in the King's Name to keep the Peace, altho' they cannot know him to be a Constable, yet at their Peril they ought to obey him.
- Co. 9. 68. And in these Cases, the Killing of such an Officer, or any of their Company, is in Law intended to be by Malice prepensed, *sc.* that the Murderer had a malicious Resolution in him, to oppose himself against the Law, the Officers thereof, and the Justices of the Realm.
- Flo. 174. Also a Thief that offereth to rob a true Man, killing the true Man in resisting him, it is Murder of Malice prepensed. *Plow. 474. Co. 9. 67.*
- 2 E. 3. 18. A Man carried his Father (being sick, and against his Will) in a frosty and cold Time, from one Town to another, and the Father died thereof; this was adjudged Murder in the Son.
- 2 Eliz. Cromp. 24. An Harlot delivered of a Child, hid it in an Orchard (it being alive) and covered it with Leaves, and a Kite struck at it, and the Child died thereof, and the Mother was arraigned and executed for Murder.

Fit. Co. 311. Stamf. 17. Exod. 21. 29. A Man hath a Beast accustomed to do Hurt, and the Owner knowing thereof, doth not tie him or otherwise keep him fast shut up, but suffereth him to go at Liberty, and after the Beast killeth a Man; this is Felony in the Owner of the Beast: For by such Sufferance he seemeth to have a Will to kill. *Exod. 21. 29.*

So if a Man hath an Horse, that will strike such as come near him, and his Master knowing this, rideth amongst a Multitude of People, &c. and the Horse killeth a Man; this is Felony in the Master. *Leet. M. Cook.*

And in these four last Cases, *voluntas reputabitur pro facto*, Death ensuing thereupon: For it may plainly appear, that they had a Will and Meaning of that Harm which followed, which Will in them, doth amount to Malice, and so makes their Offences to be Murder, and in such Cases where Death ensueth, *Nihil interest, utrum quis occidat, an causam mortis præbeat.*

'The same Law seems of an Officer, who being appointed and authorized to whip, or with an hot Iron to burn or brand, or otherwise to punish an Offender, shall do it with such Rigour, or in such extream Manner, as that the Offender by Reason and Means thereof dieth.

'If a Man perswades another to kill himself, and be present when he doth, he is a Murderer. *Ba. 65.*

The Book called *Speculum Justiciar.* speaking of *Homicida voluntate*, saith, it may be either by Striking, Imprisonment, Famine, or other Pain. *§. 2. Four Ways committed.*

1. By Striking or Stabbing, &c. as you may see by that already said.
2. By Imprisonment; as if a Man by Imprisonment shall detain the Body of another (under Colour of Law or Right) so as he dieth thereby. See *hic verbo, Gaoler.*
3. By Famine; as if a Man shall cast, or leave an Infant, or other Person which cannot go, in a Desert or such other Place, where no Person usually resorts, by Reason whereof such Infant, or other impotent Person dieth for Want of Succour, &c.

4. By

4. By Pain; as if a Man by Torture (or *Dures*) causeth another to accuse himself, where in Truth he did not the Thing, but to be rid of the Pain (rather desiring Death) he confesseth himself guilty of the Felony, when he is not guilty.

If a Man dieth in the Hand of a Physician or Chirurgion authorised to practise, this is no Felony in the Physician or Chirurgion. And yet if a Physician bearing Malice to one who is under his Cure, shall give him a Medicine contrary to his Disease, whereof the Patient dieth; this is Felony in the Physician. *Lectur. M. Cooke.* P. Cor. 163. Stat. 16

If a Chirurgion authorised, do through Negligence in his Cure, cause the Party to die, the Chirurgion shall not be brought in question of his Life; and yet if he do only hurt the Wound, whereby the Cure is delayed, and Death ensues not, he is subject to an Action upon the Case for his Misfeasance. *Sir Fr. Ba. 37.*

And if one which is no Physician or Chirurgion (or which is not allowed to use or practise such Faculty) will take a Cure upon him, and his Patient dieth under his Hand; this hath been holden to be Felony: But *quere* of this last Case, for it cannot be discerned whether the Patient's Death cometh by any lawful Default, in the Party taking such Cure upon him, or by the Patient's Infirmary; again, there appeareth in them no Will to do Harm, but rather to do Good; and then the Statute of 34 H. 8. 8. leaveth so great a Liberty of such Practise to unskilful Persons, that it will be hard now to make it Felony. But if a Smith, or other Person (having Skill only in dressing or curing the Diseases of Horses or other Cattle) shall take upon him the Cutting or letting Blood, or such like Cure of a Man, who dieth thereof, this seemeth to be Felony; for the Rule is, *Quod quisque norit, in hoc se exerceat.* 34 H. 8. 8. P. Chair. 3 Lamb. 236.

Two playing at Tables, fall out in their Game, and the one killeth the other with a Dagger suddenly; this was holden Murder, in one *Emery's Case* before *Bromley*, at the Assizes in *Cheshire*, about 27 *El.* as Master *Crompton* reporteth. Crompt. 23.

§. 6. *Provocation.* The Husband, upon Words between him and his Wife, suddenly struck his Wife with a Pestle, whereof she died, and it was adjudged Murder at the Assizes at *Strafford*, before *Walmesley*. 43 *Eliz.* Crompt. 25.

Quere the Reason why it should be Murder in these two last Cases, considering there appeareth no precedent Malice, and that it was done upon the sudden, and upon Provocation.

"The Reason seemeth to be, for that in these two Cases there was no sufficient Provocation to take off the Imputation of Malice; for it was resolved in my Lord *Morley's Case* (as I heard Mr. Justice *Wild* say in the Common Pleas) that Words were no sufficient Provocation to excuse the Malice intended.

§. 7. *Challenges.* "*Bird* challenges *Taverner* to fight, and appoints a Time and Place; for that *T.* did not pay some Money he owed him, *T.* paid the Money duly, and then to preserve his Reputation, meets at the Place appointed, and *B.* kills *T.* and this was adjudged Murder; for the Law respects not who gave the first Occasion, if the other accept and undertake the Quarrel; and such Fights grew from settled Determinations and Purposes to kill; and all Deaths happening of Fights upon Challenges are Murder. *P. 14 Jac. Roll's Rep. Part 2. p. 260.*

A. hath wounded *B.* in Fight, and after they meet suddenly, and fight again, and *B.* killeth *A.* this is Murder, and Malice shall be intended in *B.* upon the former Hurt; but now if *A.* had killed *B.* Lamb. 247.

this is Manslaughter in *A.* for his former Malice shall be thought to be appeased by the Hurt he first did to *B.*

Two were in Suit, and they meet suddenly, and quarrel about the Suit, and the Defendant killeth the Plaintiff; this seemeth Murder.

Tamen quere.

If *A.* of Malice premeditated, discharge a Pistol at *B.* and misleth him, and throws down his Pistol and flies, and *B.* pursueth him to kill him, whereupon *A.* turneth, and killeth *B.* with a Dagger: If the Law should consider the last impulsive Cause, it should say, that it was in his own Defence: But the Law is otherwise, for it is but a Pursuance and Execution of the first murderous Intent: And the first Motive will be principally regarded, and not the last Impulsion. Otherwise, if there had been a full Interruption. Sir *Fr. Bacon* 4.

§ 8. Also wilful Killing of another by Poison, was, and is Murder by the Common Law. See *Stram.* 21, & *Br. Indictment* 41.

And the Offenders therein, their Aiders, Abettors, Procurers and Counsellors shall suffer Death, and forfeit in every Behalf, as in other Cases of wilful Murder of Malice premeditated. 1 *Ed. 6. cap. 12. Speculum Justic.* describeth these Offenders thus, *Qui donec alius alter o manger, ou auterment chose envenom.*

The Husband gave a poisoned Apple to his Wife, to the Intent to kill her, and she not knowing it to be poisoned, gave it to her Child, who died thereof; this is Murder in the Husband, and yet he loved that Child dearly: And so it had been, if a Stranger of his own Accord had after eaten and died thereof: For the putting of Poison into the Apple, &c. upon an evil and felonious Intent, maketh it Murder, *Co. 9. 81.* whosoever be killed thereby.

A. bringeth Drink that was poisoned (knowing of it) to *B.* and advised *B.* to drink it, telling him, it would do him much Good; by Reason of which Perswasion, *B.* drunk of it (in the Absence of *A.*) and died thereof, this was adjudged Murder in *A.* although he were not present at the Time of the taking the Poison. If one giveth corrupt Victual to another, to the Intent to poison him, and he dyeth thereof within a Year and a Day (this is Murder). One layeth Corruption at another Man's Door, to the Intent to poison him with the Savour thereof, and the other Party taketh Infection by the Savour thereof and dyeth; this is Felony. *Leet. M. Coake.*

So if one giveth to another Spurge Comfits, or other such Things in Sport, and not in Malice, and he that so taketh them dyeth thereof; this is Felony. *Ibid.*

But if a Man shall prepare Rats-bane, &c. to kill Rats, &c. and shall lay this in certain Places to that Purpose, without any evil Intent, *sc.* without any Intent to kill any reasonable Creature) and another Man finds and eats this, and dieth thereof, this is no Felony. *Plo. 474.*

The Master upon Malice precedent, goeth to kill another, and taketh his Servant with him, (but he did not know his Master's Intent) and the Master and his Servant do meet the other, and the Master doth assault him, and the Servant taking his Master's Part, doth also assault him and kill him; this is Murder in the Master, and but Manslaughter in the Servant.

§ 9. 1. Note, that when a Man hath Malice to one, and intending endeavouring to kill him, he killeth another Man; this is Murder whom-

whomsoever he killeth. *Vid. Plo. 101. Dyer 128. Fitz. 262. Stamf.*

16. For his Intent was to murder.

Nay, if two fight upon Malice prepenſed, and in their Sight a Lamb. Stranger (that would part them) cometh between them, and is kill-^{238.} ed; this is Murder in them both, if it cannot be proved which of^{F. Coro. 262.} them did kill him. *Dyer 128. Plo. 474.*

A Man upon Malice shooteth at one, or lyeth in Wait to kill one, and killeth another unwittingly, in both these Cases it is Murder.

2. Note also, that in all Cases where a Man cometh or goeth about to do any Thing unlawful, as to kill, beat or disseise another, or to do any other Trespas; and in doing this, he killeth any Man, this is Murder. See *Cromp. 24 b.*

One stealing Pears in another Man's Orchard, and the Owner came and rebuked him; and the other killed him, this was adjudged Murder. *4 Maria. Crom. 24. Lam. 237.*

Also where a Man commandeth another to beat *A.* and he beateth him, so as *A.* dieth thereof; this is Murder in him that gave the Command to beat him, for that he commanded him to do an unlawful Act; by Reason whereof the Killing of a Man ensued. *Plo. 435. F. Coro. 314.*

For (as that late Reverend and Learned Judge Sir *John Dodderidge, Pag. 138.* sheweth) there is an efficient Cause casual; as if a Man intend to do any unlawful Act; and in doing thereof, another Hurt ensueth, not intended, but by Chance, yet shall he be said the Author of that Act not intended, (and so happening by Chance) that did intend the first Act.

§. 10. 3. Note also, that if divers Persons come in one Company (and as *Br. Cor. 172. F. Cor. 350. Co. 11. 5.* *Principal* Confederates in the Fact. *Stamf. 40.*) to do any unlawful Thing, as to kill, rob, or beat a Man, or to commit any Riot or Affray, or to do any other Trespas, and one of them in doing thereof, killeth a Man; this shall be adjudged Murder in them all that are present of that Party abetting him, and consenting to the Act or ready to aid him, although they did but look on, &c. See *Stamf. 40. Fitz. Indictment 22. Plo. 98.*

Nay, if they be not present, yet if they be in the same House, or upon the same Ground, it is Murder in them all. See the Lord *Dacre's Case. Cromp 25.*

Mr. *Bratton, fol. 121.* saith further, *Si plures rixati fuerint inter se in aliquo conflictu, & aliquis sit interfectus, nec appareat ex quo, nec ex cujus vulnere, omnes dici possint homicida, &c. quare,* if their Meeting were upon a lawful Occasion, and if they suddenly fall out, and no former Malice may appear.

4. Note also, that all who are present, and aiding, abetting or comforting another to do Murder, are principal Murderers, although they shall give never a Stroke. See more, *4 H. 7. 18. 13 H. 7. 10. Fitz. Coron. 309. Co. 9. 67. 112. & 11. 5.* *Plow. 100 See here.*

As if *A.* and *B.* fall out, and appoint the Field, and they meet accordingly, each of them bringing Company with them, *A.* killeth *B.* this is Murder in all those that came with *A.* as his Second, or abetting, comforting, or ready to assist or aid him, for that the Presence of these other that came with *A.* is a Terror to *B.* and an Encouragement to *A.* *Vide ibid. & Plo. 98.*

And yet if *B.* cometh in the Company of *C.* who of his Malice prepenſed, doth go to kill *D.* and then *B.* seeth them fighting together, he taketh Part with *C.* suddenly (not having any former Ma-

lice

lice to D.) and striketh at D. with the other, and D. is thus slain amongst them; this is but Manslaughter in B. for that he had no Malice precedent. *Plo. 100.* See the Case of the Master and his Servants here before. But note, that the Cause of the Coming of B. being unknown to D. his Presence might, and in Likelihood did strike Terror in D. and so the Presence of the Servants did or might strike Terror in the Party murdered, and gave Encouragement to the Master.

1 Jac. cap. 8. "If any shall stab or thrust another, that hath not any *Weapon Stabbing.*
"drawn, or hath not first stricken the Party; if the Party so stabbed or thrust dye within six Months, although Malice forethought cannot be proved; the Party offending shall not have Benefit of
"Clergy, but shall suffer Death, as in Case of wilful Murder. 1

5. Note also, that in Case of Murder, it is not material who giveth the first Blow; for if he that is slain give the first Blow, yet if there were Malice prepensed in the other, it is Murder in him that killeth him.

6. Also in Case of poisoning, the Party poisoned must dye thereof, within a Year and a Day, after the Poison received. § 11. Death.

Cor. 303. Also if a Man do beat or hurt another, whereof he dyeth, to make it
Co. 4. 42. Murder, or other Homicine, the Party hurt must dye within a Year
Co. 4. 42. and a Day next after the Hurt done or Stroke given. But to have an Appeal, it shall have Relation to the Death, and not to the Stroke, so as the Appeal must be brought within the Year after the Death, and not after the Stroke.

F.Co. 146. 7. Note also; in Murder, or other Homicide, the Party killed must
263. be in *esse, sc. in rerum natura*, and born into the World: For if a
Stamf. 21. Man hurteth a Woman with Child, whereby he killeth the Infant
c. in its Mother's Womb, by our Law (at this Day) this is no Felony,
See Exod. 21, 22, 23. neither shall he forfeit any Thing for such Offence: And whether
It was Death by the Law of God. (upon a Blow or Hurt given to a Woman with Child) the Child dye
Lam. 229. within her Body, or shortly after her Delivery, it maketh no Difference: Yet in ancient Time it was holden to be Felony; and M.
Br. Cor. 68. 91. *Bracton* took it to be Homicide, if the Blow were given *postquam puerperium animatum fuerit*: But if the Mother of the Child dye within a Year and a Day after such Hurt done to her, and upon that Hurt, this is Felony. § 12. In esse.

So if the Adulterer, &c. counselleth the Woman to murder the Child when it shall be born, and she doth accordingly, the Adulterer is accessory to this Felony, by this his Counsel given before the Birth.

Co. 7. 9. Also if a Man killeth a Man unknown, yet it is Felony. *Abr. d. Ass. 76.*

8. Compulsion also is a good Excuse in our Law in some Cases, as if any Man's Arms be drawn by Compulsion, and the Weapon in his Hand by Means thereof doth kill another; this is not Felony in him whose Arms were so drawn, &c. *Plo. 19 a.*

9. Involuntary Ignorance excuseth also with us: So as if an Infant not having Intelligence, or of a Man *non sane memoria*, shall kill another, this is no Felony in them. See hereof *hic postea*.

10. Intent to do a Felony or Murder, is not punishable by the common Law of this Realm, until the Act be done: But in Treason and

In some other particular Cases by Statute, the Intent may be punished. *Doff. & Stud. 132. hic.*

In Cases of Murder or Poisoning, the Offenders shall not have the Benefit of Clergy. *1 E. 6. c. 12. 23 H. 8. c. 16 H. 8. c. 17.*

Note also, That by the Law of God no Redemption was to be taken for the Life of a Murderer, who purposely hath committed Murder, but he shall be put to Death: For Murder defileth the Land; and the Land cannot be cleansed of the Blood that is shed therein (by wilful Murder) but by the Blood of him that shed it. *Numb. 35. 31. 33.*

§. 13.
Pardon.

And by divers old Statutes, no Charter of Pardon ought to be granted to any Person in Case of Murder or other Homicide, save only where the King may do it by his Oath, that is to say, where a Man killeth another in his own Defence, or by Misfortune. See *P. Pardon 1.* Also the Statute of *6 Edw. 1. cap. 9. 12 Edw. 3. cap. 2. 4 Edw. 3. cap. 13. 14 Ed. 3. cap. 15.*

And by our Law at this Day, a Pardon of all Felonies will not discharge Murder, except the Pardon be with a *Non obstante, &c.* or that Murder be expressly mentioned in the Pardon. See *Co. 6. 13. b.*

Neither will a Pardon of all Felonies discharge a Man that is attainted of Felony, except also the Attainder and the Execution be pardoned. See *9 E. 4. 29 Co. 6. 13. b.*

And this Pardon is twofold; one *ex gratia Regis*, which the King, in some special Regard of the Person or other Circumstance, sheweth and affordeth upon his Prerogative: The other by Course of Law, which the Law in Equity affordeth for lesser Offences, as of Homicide by Misadventure or *Se Defendendo*.

Note, That he which hath a Pardon for Felony, if he hath not found Sureties for his good Abearing, or if afterwards, during his Life, he shall break the Peace: Such Pardon shall be holden for none, but that he may be hanged notwithstanding his Pardon; for by the Pardon, the Offence *tegitur, non tollitur*. See *10 E. 3. c. 3. P. Pardon 3 H. 7. 7. 3. 3 H. 7. 7.* where one was executed upon this Statute, for making an Affray after his Pardon. *Br. Coron.*

None have Authority to pardon any Treason, Murder or other Felony, or any Accessary to the same, save only the King: It being one of his royal Prerogatives. *27 H. 8. 24. P. Prerog. 17.*

Two Men were beating another in the Street, and a Stranger passing by, said, it was a Shame for two to beat one; whereupon one of them ran to the Stranger in a furious Manner, and with a Knife, which he held in his right Hand, gave him a mortal Wound, of which he died; and both the other being indicted at the Sessions in the *Old-Bailey*, *9 Geo.* as Principals in the said Murder, the Judges who were then present were of Opinion, that one of them would be neither Principal or accessary to the Murder, because it did not appear that he intended any Injury to the Person that was killed: 'Tis true, both of them were doing an unlawful Act, but the Death of the Party did not ensue upon that Act; so one was acquitted, and the other found guilty of Murder.

C H A P. CXLVI. *Vide* XCIV.*Manlaughter.* See *Cap. 143 of Homicide.*

Manlaughter, in right Signification thereof, implieth all Manner ^{Definition} of Homicide, and extends in the General, as well to Murder as to the rest. Nevertheless, for that in common Speech it is restrained to Manlaughter by Chancemedly alone, in that Sense I will here write of it.

Manlaughter, otherwise called Chancemedly, is the Killing of a Man feloniously, *sc.* with a Man's Will, upon a sudden or present Heat, and Fury of Mind, yet without any Malice forethought; as when two do quarrel and fight together upon the sudden, and by meer Chance, without any Malice precedent, and one of them doth kill the other; this also is Felony of Death. *Plo. 101. Br. Coron. 22.*

And yet in Case of Manlaughter (not being within the Statute of 1 *Jac.*) the Offender shall have the Benefit of Clergy for the first Time, and by the Law of God there was a City of Refuge appointed for such to flee unto. *Exod. 21. 13. Deut. 19. 3, 4. Numb. 35. 11. 22.* For in such Cases of Chance (as we term it) *sc.* Where the Offender hath not laid wait, nor hated in Time past, the same Scripture saith, That God offered the Party so slain, into the Hands of such Manslayer. *Exod. 21. 13.*

Crom. 16. Two fall out upon the sudden, and fight, and the one breaketh his Weapon, and a Stranger standing by (yet being none of their Company) lendeth him a Weapon, and therewith he killeth the other: This is Manlaughter, as well in him that killed the other, as in the Stranger, who lent him his Weapon.

A. and *B.* fall out upon a sudden, and fight, and *A.* is so fierce, that he runneth upon the other's Weapon, and is slain; yet this seemeth Manlaughter in *B.* for he should have fled to some Wall or Strait, *Ec. quare.*

P.R. 122. b. Stamf. 16. a. And if *B.* had fled to a Wall, *Ec.* and *A.* pursueth him, and *B.* perceiving that *A.* would assault him, holdeth his Weapon between them, and *A.* runneth upon the Weapon and is slain; this is Homicide in his own Defence, and for which *B.* shall forfeit only his Goods: But otherwise it had been if *B.* had fallen, and lying upon the Ground had drawn his Knife or Dagger, and *A.* falleth thereon, and so is slain; for then *B.* could not flee, nor make any other Defence for his Safety, and therefore here *B.* shall not forfeit his Goods, nor be culpable of his Death, but be discharged: For *A.* in a Manner killed himself. See hereof, *postea.*

Two fight together upon the sudden, and part, and presently after meet and fight again, and one killeth the other; or the one presently fetcheth a Weapon, and killeth the other. This seemeth but Manlaughter, for that it is done all in one continuing Fury, which was at the first without Malice, and could not in so short Time be appeased or asswaged. *Cromp. 23. b. 24. a. 26. a. b.*

So if two have born Malice the one to the other, and be reconciled, ^{Lamb 240.} and after meeting again, they fall out upon new Occasion, and by Agreement immediately they go into the Field to fight, and the one killeth the other; this seemeth but Manslaughter, (*causa qua supra*) unless the Distance of Time had been such, that by reasonable Conjecture their Heat might be asswaged.

And yet by good Opinions it is lately holden, that in both these last Cases, and the like, though it be in a continuing Fury, yet if it be wilfully done, it is wilful Murder, for which the Offender shall suffer Death.

See more of *Manslaughter* before in *Murder*, and after in *Misadventure*.

C H A P. CXLVII. Vide XCV.

What Persons are chargeable with Homicide, and what not.

^{Non compos mentis.} IF one that is *Non compos mentis*, or an Ideot, kill a Man; this is no ^{Fitz.N.B. 202.} Felony, for they have not Knowledge of Good and Evil, nor can ^{21H.7.33} have a felonious Intent, nor a Will or Mind to do Harm: And no ^{Plo. 19.} Felony or Murder can be committed without a Felonious Intent and ^{Co.4.124.} Purpose; for it is called *Feloniam, quia fieri debet felleo animo. Co.*

4. 144.

And again, *Actus non facit reum, nisi mens sit rea*; and a Mad-man is *Amens, id est, sine mente*, without his Mind or Discretion, and is enough punished by his Madness. *Co. L. 247.*

So it is, if a Lunatick killeth another during his Lunacy, it is no ^{Hob.p.96} Felony. (*Plo. 260.*) For all Acts done by him in Lunacy, are as ^{134.} the Acts of an Ideot. *Co. 4. 125.*

Uncore tiel Persons serra puny in Trespas, pur hurt fait al corps d'auter.

If another Man shall upon Malice procure a Mad-man to kill another, though a Mad-man shall be excused, yet the Inciter or Procurer shall be punished as a Principal. *Ba. 57. Vide hic cap. 108.*

Now there be three Sorts of Persons accounted *Non compos mentis*; to this Purpose, and the like.

1. A Fool natural, who is so (*a natiuitate*) from his Birth; and in such a one there is no Hope of Recovery.

2. He who was once of good and sound Memory, and after (by ^{Co. 124.} Sicknes, Hurt, or other Accident, or Visitation of God) loseth his Memory.

3. A Lunatick, *Qui gaudet lucidis intervallis*, and sometimes is of good Understanding and Memory, and sometimes is *Non compos Mentis*.

^{Infant.} An Infant of eight Years of Age or above, may commit Homicide; and shall be hanged for it, *viz.* if it may appear (by hiding of the Person slain, by excusing it, or by any other Act) that he had Knowledge of Good and Evil, and of the Peril and Danger of that Offence.

See 3 H. 7. 1. & 12th Stamf. 27. Fitz. Coron. 118. 129. & Br. Coron. 133. 136.

And yet Sir Edw. Coke on *Littleton*, f. 147. saith, That it is with an Infant, until he be of the Age of fourteen Years (which in Law is accounted the Age of Discretion) as it is with a Man *Non compos mentis*; and that in Criminal Cases (as Felony, &c.) his Act and Wrong shall not be imputed to him, for that *Actus non facit reum, nisi mens sit rea*, &c. Sir Fr. Bacon 38. accordeth.

But if an Infant (of such tender Years, as that he hath not Discretion or Intelligence,) kill a Man, that is not Felony in him. 3. H. 7. 1. b. ^{Deaf and dumb.}

Flow. 19. If one that is dumb killeth a Man, it is Felony; yet *quare*, how he shall be arraigned.

F. Coro. 193. Stamf. 16. A Man born deaf and dumb, killeth another, this is no Felony; for he cannot know, whether he did evil or no; neither can he have a felonious Intent, &c. See hereof, Tit. *Surety for the Peace*, ante. Otherwise, if he were not so born, but becometh so afterwards. See Br. Coron. 101. & 217. That a Man which can neither hear nor speak, may commit Felony, and shall be imprisoned, &c.

Yet note, in these former Cases of Homicide, committed by Persons being *Non compos mentis*, or wanting Discretion, such Things happen by an involuntary Ignorance; and therefore the Law accounteth such Act of theirs to be no Felony.

Flow. 19. But if a Man that is drunk, killeth another, that is Felony; for it is a voluntarily Ignorance in him, in as much as it cometh to him by his own Act and Folly. Sir Edw. Coke L. 247. calleth a Drunkard *Voluntarius Demon*, and saith, That such a one hath no Privilege thereby, but what Hurt or Ill soever he doth, his Drunkenness doth aggravate it.

C H A P. CXLVIII. Vide XCVI.

Misadventure or Case.

BY the Statute of *Marl. cap. 25*. Killing a Man by Misfortune or Misadventure only, shall not be adjudged Murder.

Misadventure, in a general Signification, is where a Man is killed partly by Negligence, and partly by Chance, and against the Mind of the Killer; and when the Killer's Ignorance or Negligence is joined with the Chance; or Homicide by Misadventure or Misfortune more legally, is when any Person doing a lawful Thing, without any evil Intent, hapeneth to kill a Man casually; by the Law of God there was a City of Refuge appointed for such Persons to flee unto. *Numb. 35. 15.* & 22 *Josh. 20. 3.* for such an Act happening in such Sort, seemeth to be the Work of God himself. See *Prov. 16. 33.* & *Exod. 21. 13.* And by our Law now, this is no Felony, neither shall there be any Judgment of Death given upon him; but he shall have his Pardon of Course, for his Life and his Lands; yet he shall forfeit his Goods in Regard that a Subject is killed by his Means. See *Stamf. 16. a. b.* *Fitz. Coron. 69. 302.* & 354. *Br. Forf. 9. & Co. 5. 91. b.*

As

As if a School-master in reasonable Manner beating his Scholar, for Correction only, or a Man correcting his Child or Servant, in reasonable Manner; and the Scholar, Child or Servant happen to die thereof; this is Homicide by Misadventure. *Cro. 136. Brañ. 121.*

So if a Man shooting at Buts, or other lawful Mark, and by the shaking of his Hand, or otherwise against his Will, he killeth one that standeth or passeth by. *21 Hen. 7. 29. Red. 6. Edw. 4. 7. Br. Coron. 59. & 148.*

So if a Carpenter, Mason or other Person doth throw or let fall a Stone, Tile or Piece of Timber from an House or Wood, or other Thing from a Cart, &c. (and giveth Warning thereof) and another is killed thereby against his Will. *21 H. 7. Coron. 59. Brañ. 121.*

So if a Labourer that is felling or lopping a Tree, and the same, or Part thereof, falleth and killeth a Man. *Ed. 4. 7. F. Cor. 398.*

So if the Head of his Hatchet or other Tool falleth from him, and happeneth to kill one standing by. *Deut. 19. 5, 6. & 10. accordeth, sc. That he is not worthy of Death, but innocent.*

So if a Man be (in due and convenient Time) doing any other lawful Thing, that may be of Danger to such as pass by, and shall give Warning thereof, so that they may hear and flee the Peril, and yet another passing that Way shall be killed therewith. *11 H. 7. 23. See Br. Cor. 229. contra.*

And so if Men shall run at Tilt, Just or fight at Barriers together by the King's Commandment, and one of them doth kill another: In these former Cases and the like, it is Misadventure, and no Felony. *Hob. 134.*

And yet in such Cases of Misadventure, as also where one killeth another *Se Defendendo*, by the Common Law these Offences were Felony, and the Offender should have died for the same; but now by the Statute, such Offenders are to have Pardon for their Life and Lands, yet their Goods shall remain forfeit as before (at the Common Law.) See these Statutes. *6 Ed. 1. c. 9. & 2 Ed. 3. c. 2. 21 Ed. 3. fol. 17. Br. Cor. 40. & Forf. 9. 13. 15.*

§. 2. Se Defendendo. Also in these Cases of Misadventure, and in the former Cases of Homicide committed by *Infants*, and other Persons, being *Non compos mentis*, as also where one killeth another in Defence of his Person; they shall be discharged in this Manner, *sc.* If they desire to purchase their Pardon, they must upon their Trial, plead *Not Guilty* (and shall give in Evidence the special Matter) and then this special Matter being found by Verdict, they shall be bailed, and then they must sue forth a *Certiorari*, to have this Record certified to the Lord Chancellor of *England*, who thereupon shall make them a Pardon of Course under the Great Seal, without speaking or suing to the King for it. See *Stamf. 15.* *Fitz. 246. & 248. b. Br. Cor. 1. See Stat. 9 E. 1. 9. 4 H. 7. f. 23 Reg. f. 309.*

Unlawful Act. But if a Man be doing of an unlawful Act, though without any evil Intent, and he happeneth by Chance to kill a Man; this is Felony, *viz.* Manslaughter at the least, if not Murder, in Regard the Thing he was doing was unlawful. *Finch. fol. 75.* *Stamf. 162.*

As shooting of Arrows, or casting of Stones into the Highway, or other Place, whither Men do usually resort. *Stamf. 120.*

So of fighting at Barriers, or running at Tilt or Justs, without the King's Command, whereby a Man is slain; and although it were by the King's Command, yet it was holden Felony by the Justices, *tempore H. 8. Hob. p. 134. contra.* *11 H. 7. Br. Cer. 229.*

11 H. 7. 23. Playing at Back-Sword, Foot-ball, Wrestling, and the like, whereby one of them receiveth Hurt, and dyeth thereof within a Year and a Day. In these Cases, some are of Opinion, that 'tis Felony; some others are of Opinion, that this is no Felony, but that they shall have their Pardon of Courte, as for Misadventure, for that such their Play was by Consent: And again, there was no former Intent to do Hurt, or any former Malice, but done only for Sport, and Trial of Manhood.

Fitz. Cor. 136. A Man casting a Stone at a Bird or Beast, and another Man passing by is slain therewith, *quare*, whether this be Manslaughter, or but Misadventure. The Opinion of *Fineux* Chief Justice in 11 H. 7. fol. 23. is, That if a Man cast a Stone over an House, and killeth a Man, this is no Felony, but Misadventure. But Mr. *Bracton* abridging this Case, saith, It seemeth to be no Law, but where the Casting of a Stone is lawful; and where a Mason is untilling an House, &c. but to cast it for Pleasure, and not in lawful Labour, seemeth to be Felony: And so was the Opinion of Mr. *Bracton*, lib. 3. fol. 110 & 121. And Mr. *Stamford*, Especially if the Casting of the Stone be in such Place where Men do use to pass by. Yet Mr. *Bracton* lib. 3. c. 17. *De homicidio per infortunium & casualiter*, giveth these Rules, *Crimen non contrahitur nisi voluntas nocendi intercedat, & voluntas & propositum distinguunt maleficium, secundum quod dicitur poterit de infante & parioso, cum alterum innocentia consilii tueatur, & alterum facti imbecillitas excuset.* Again, *In maleficiis spectatur voluntas non exitus, & nihil interfit, occidat quis, an consumam mortis prebeat.*

C H A P. CXLIX. Vide XCVII.

Casual Death.

ALSO a Man may be slain by other Casualty, than by Hands or Means of another Man, as by the Fall of an House, Pit or Tree, &c. upon him; or be killed by a Bull, Bear or other Beast, or by an Horse or Cart, &c. or be killed by some Fall, which he himself taketh.

And in these and the like Cases, observe these Rules.

1. First, if a Man be slain in any such Manner, yet if it be by the Means or Procurement, or wilful Default of another Man. This shall be Felony in the Party procuring or causing it.
2. The Thing which is the Cause of such casual Death, shall be forfeit to the King, praised and taken for a *Deodand*, and the Price of the Thing shall be distributed in Alms to the Poor, by the King's Almoner, for *Deodand, est quasi Deodandum, id est, in Eleemosynas erogandum.* But the Almoner hath no Interest in such Goods, but hath only the Disposition of the King's Alms, *Durante beneplacito*; so that the King may grant them to any other. See Co. 1. 5c. *Dyer* 77.

The Office and Duty of this Almoner see Co. 1. 94.

3. The Forfeiture shall have Relation from the Stroke given; so as the Party or Owner selling such Thing as was Cause of such Death after

after the Stroke given, taketh not away the King's Right, but that he shall have it as forfeited, notwithstanding such Sale.

4. *Deodands* are not forfeited, until the Matter be found of Record, and therefore they cannot be claimed by Prescription. Co. 5. 110.

5. The Jury which find the Death of the Man, must also find and appraise the *Deodand*, and the Sheriff shall be charged with the Price of such *Deodand*, and shall levy the same of the Town where it falleth, although it were not committed to the Town to keep: And therefore it behoveth the Town to see it forth-coming. See the Stat. Co. 5. 110. F. Cor. 298. 121. P. Cor. 10.

de officio Coronatoris. 4. Ed. 1.

6. If he that is so slain be under fourteen Years of Age, nothing shall be forfeit to the King as a *Deodand* for him. F. For. 383. 21.

7. If a Man dieth suddenly, or by Misfortune, Mr. *Bracton*, lib. 3. *Incipit. Tunc attachiare debent inventorem usque ad adventum justiciariorum & similiter omnes illos qui in societate illa interfuerint in tale accidit infortunium, fol. 122.*

And if a Man that is unknown be found dead in the Field, his Apparel and Money about him shall be given to the Poor, &c. And if he were known, then his Goods shall be delivered to his Executors or Administrators, or to the Ordinary; but shall not be taken as a *Deodand*, in either Case (for they are not of the Nature of a *Deodand*) they being no Cause of his Death. F. Indictment. 27. 21.

Deodand, quid Next what shall be forfeited and taken for a *Deodand*: The old Rule is, *Omnia que movent ad mortem, sunt Deodanda*; and yet besides, *Deodands* may be of some Things that a Man shall move or fall from, though the Thing it self moves not: As to fall from a Ship, Cart, Mow of Corn or Hay, &c. So as *Deodands* are any Goods which do cause, or are Occasion of the Death of a Man by Misadventure. *Co. Ibid.* See more *Fitz. Cor. 314, 326, 341, 342, 344, 388, 389, 398, 401, 409.* Dyer 77. Co. 5. 110.

If a Man killeth another with my Sword (or other Weapon of mine) my Weapon shall be forfeit, as a *Deodand*; for it shall be adjudged my Fault, that I did not keep my Weapon from him. *Doct. & Stud. f. 156. b.* Br. Fort. 112.

If I shall lend another Man my Sword or other Weapon, knowing him to be minded to fight, or make an Affray therewith, and he with my Weapon in such Fight or Affray, killeth one, *quare*, if this be not Felony in me: For you shall find that an Abbot that lent a Bow and Arrows to another, to the Intent to kill the King's Deer, was therefore fined and ransomed. *Crompt. Author des Courts, fol. 191.*

The Enquiry of such casual Death, belongeth also to the Coroner: But if he cannot have the Sight of the Body, and so cannot enquire thereof, *quare*, how the King shall be entitled to the Goods. *Vide hic postea.*

The Office of Coroner in such Cases see *Bracton lib. 3. & Crompton 226.*

C H A P. CL. Vide LXXXIX.

Homicide upon Necessity.

SOMETIME the Justice of Law commandeth a Man to be put to Death, As when the Judge hath pronounced Sentence of Death against an Offender (attainted by due Courfe of Law) there (in due Execution of Justice) an Officer, or other Person lawfully deputed, may execute such Judgment or Sentence according to his Warrant; this is called Justice, or rather Judgment, which is the lawful Execution of Justice.

Istud autem homicidium, si sit ex livore, vel delectatione effundendi humanum sanguinem, licet iuste occidatur iste, tamen peccat mortaliter propter intentionem corruptam. Bract. 120.

Stamf. 13.
See Doct.
& Stud.
fol. 133.

But if the Officer or other Person, shall proceed therein upon his own Authority, without Warrant, or *Non observato ordine juris*; as where an Offender hath Judgment given upon him to be hanged, if the Sheriff or other Officer, &c. shall behead him, or by other Means put him to Death. This is Felony in such Officer, &c. Co. 7. 14.

Stamf. 15.

Also if a Stranger being not thereto lawfully deputed, shall (upon his own Authority) put to death an Offender that is condemned to die. This is Felony. See Co. 7. 14. a.

Nay, if the Judge himself, who gave the Judgment of Death upon an Offender, shall after put the same Offender to Death, it is not justifiable in him.

If the Justices of Peace shall arraign a Man of Treason before them at their Sessions, who is found guilty, &c. and thereupon is hanged: This is Felony, as well in the Justices, as in the Sheriff, or Officer which shall hang him: For that the Justices of Peace had no Authority therein, but it was *Coram non Iudice*. *Lecture, M. Cook*: See also Co. 10. fol. 76.

If the Justices of Peace shall arraign a Man of Felony, upon an Indictment of Trespas, whereupon he is hanged. This is Felony in the Justices, but not in the Sheriff or Officer. *Lecture M. Cook*. The Difference between these two Cases, appeareth in my Lord Cook's Reports, lib. 10. fol. 76. sc. For that in this last Case, the Justices of Peace had Jurisdiction of the Cause; and therefore, although they proceeded *inverso ordine*, or erroneously, yet the Officer is excusable.

Sometimes also the Justice of the Law tolerateth and suffereth a Man to be slain, sc. for the necessary Execution and Advancement of Justice, which otherwise should be left undone: And in such Case, the Law of the Land imputeth it not as any Fault to him that shall so kill a Man, but freely dischargeth him thereof, without the King's Pardon.

F. Cor.
262.
Stamf. 12.

As a Sheriff, Bailiff, or any other Person who hath a lawful Warrant to arrest a Man indicted of Felony, may well justify the Killing of him, if he will not suffer himself to be arrested, and yield himself, and that they cannot otherwise take him. See 21 Aff. 55. & Fitz. Cor. 288 & 328.

F. Cor.
363.
Stamf. 13.

And so every Person whatsoever, without any Warrant, may apprehend a Felon upon Hue and Cry, or otherwise. And if he will not

yield to be arrested, but shall resist or fly, the Pursuer may kill him without blame. See *Fitz. Chron.* 328. & *Co.* 5. 109. b.

Herewith also agreeth the *Doctor and Student*, lib. 2. cap. 41. saying, If any Person that is an Officer would arrest a Man that is outlawed, abjured, or attainted of Murder or any other Felony, and such Offender shall disobey the Warrant, and by Reason of that Disobedience he is slain, the other shall not be impeached for his Death; for it is lawful for every Man to arrest and take such Persons, and to bring them forth, that they may be ordered according to the Law.

An Offender in Felony is led towards the Gaol, and breaketh away from those that conduct him, and maketh Resistance or flieth; his Conductors may justify to kill him, if they cannot otherwise take him again. F. Cor. 288 & 328.

A Prisoner in the Gaol attempteth to escape, and having broken his Irons, striketh the Gaoler (coming in the Night to see his Prisoners) and the Gaoler slayeth such a Prisoner. This is no Felony. 22 Aff. 35.

Riotors, and such as shall make any Forcible Entry or Detainer, against the Statutes, if they shall resist the Justices of Peace or other the King's Officer, or shall not yield themselves, but shall stand on their Defence, when the Justices of Peace, or other Officer, shall come to arrest or remove them, if any of them happen to be slain. This is no Felony in the Justice of Peace or Officer, or in any of their Company that killeth such Riotors, &c. *Lamb.* 310. Cro. 24. 61. 30 & 158.

The Sheriff, Bailiff or other Officer cometh (by Virtue of the King's Process) to arrest another for Debt or Trespas, who maketh Resistance, and thereupon is slain by such Officer or any of his Company; this hath been taken to be no Felony, *tamen quare*, what the Law is at this Day: For although the Sheriff (being the King's Officer) ought to see the King's Command executed, yet that must be understood to be executed by all lawful Means and Ways. Stamf. prerog. fol. 46. Cor. 24. 30 Doct. & St. 133. b. Stamf. 13. e, f, g.

But in all these former Cases, there must be an inevitable Necessity; *sc.* That the Offender could not be taken, &c. without killing of him.

"If two Masters of Defence, Playing their Prizes, kill one another, it is not Felony. an-Hob. 134.

§ 5.
Necessity.

"Necessity of three Sorts, *sc.*

1. Of Conservation of Life, &c.

2. Of Obedience, as where the Wife stealeth with her Husband.

3. Of the Act of God, or a Stranger.

Yet in these Cases, Necessity privilegeth in Cases of Homicide only when it is inevitable. *Bracton.*

And in Cases of Theft only *Quoad jura Privata, sed non valet contra Republicanos.* *Bo.* 32.

Also when one Man killeth another in the necessary Defence of himself, or his, thereby to deliver himself, his Possessions or his Goods, or some other Persons, which he is bound to defend from Peril, and which cannot otherwise escape. This is Homicide tolerated upon Necessity.

§ 6.
For Defence of Person, House or Goods.

And here the Sword is (as one saith) a Weapon of Defence to keep off Violence, and the Use of it made lawful by the Law of Nature, *Vim vi, &c.* Yet *cum moderamine inculcata tutela, & pro hac vice tantum.*

24 H. 8. 5. To kill an Offender, which shall attempt feloniously to murder or
 P. Forf. 1. rob me in my Dwelling-house, or in or near any Highway, Cartway,
 24 P. 8. c. Horse-way or Foot-way, or that shall attempt Burglary, or felon-
 H. 5. P. ously to break my Dwelling-house in the Night: This is justifiable
 For. 1. by my self, or by any of my Servants or Company, whom the said
 Hob. p. 96. Evil-doers shall so attempt to rob or murder, or by any Person be-
 Cor. 5. 19. ing in my Dwelling-house, which the same Evil-doers shall attempt
 & 11, 28. so to break by Night.
 Exod. 22. 2.

And this being so found by Verdict, they shall be all discharged
 without Loss of Life, Land or Goods, or Pardon. 24 H. 8. cap. 5.
Stamf. de Prærog. 46.

26 Aff. 12. To kill a Thief or Murderer, (*sc.* one which goeth about to rob
 F. Cor. or murder me) in the Defence of my Person, my House and Goods,
 261, 305. was no Felony, but justifiable by the Common Law, before the Sta-
 & 330. tute of 24 H. 8. cap. 5. which Statute doth also declare the Law to
 be so, and doth enact it) *Stamf. 14.* See *Co. 5. 91. & 11. 82. Br. Co-
 ron. 100, 102.* And yet at the Common Law there was this Disso-
 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 841. 842. 843. 844. 845. 846. 847. 848. 849. 850. 851. 852. 853. 854. 855. 856. 857. 858. 859. 860. 861. 862. 863. 864. 865. 866. 867. 868. 869. 870. 871. 872. 873. 874. 875. 876. 877. 878. 879. 880. 881. 882. 883. 884. 885. 886. 887. 888. 889. 890. 891. 892. 893. 894. 895. 896. 897. 898. 899. 900. 901. 902. 903. 904. 905. 906. 907. 908. 909. 910. 911. 912. 913. 914. 915. 916. 917. 918. 919. 920. 921. 922. 923. 924. 925. 926. 927. 928. 929. 930. 931. 932. 933. 934. 935. 936. 937. 938. 939. 940. 941. 942. 943. 944. 945. 946. 947. 948. 949. 950. 951. 952. 953. 954. 955. 956. 957. 958. 959. 960. 961. 962. 963. 964. 965. 966. 967. 968. 969. 970. 971. 972. 973. 974. 975. 976. 977. 978. 979. 980. 981. 982. 983. 984. 985. 986. 987. 988. 989. 990. 991. 992. 993. 994. 995. 996. 997. 998. 999. 1000.

20 Aff. 12. And if one or more come to burn my House, I, or any of my Ser-
 Finch. vants may justify to shoot out of my House at them, or may issue
 forth, and kill them; for such Intent of theirs is felonious. *Br. Co-
 ron. 100.*

If a Woman kill him that assaileth her to ravish her: This is justi-
 fiable by the Woman, without any Pardon. *Sir Fr. Ba. 34.*

And in these Cases, *Se Defendendo* is a Plea for him, or her that
 is charged with the Death of another, saying, That they were dri-
 ven to that they did, in their own Defence, the other so assaulting
 them, &c.

If divers be in Danger of Drowning, by the Casting away of a
 Boat or Barge, and one of them gets to a Plank or on the Boat's
 Side, to keep himself above the Water, and another to save his
 Life, thrust him from it, whereby he is drowned. This is neither
Se Defendendo, nor by Misadventure, yet justifiable. *Idem 30.*

And for this inevitable Necessity *Bratton* giveth this Rule, *Si au-
 tem inevitabilis, quia occidit hominem sine odii meditatione, in me-
 tu & dolore animi se & sua liberando, cum aliter evadere non posset,
 non tenetur ad penam homicidii, f. 120.*

If a Man imprisoned for Felony escape, and the Gaoler pursues
 him, but he resisteth and refuseth to yield himself, and thereby the
 Gaoler kills him; this is justifiable and not Manslaughter. But o-
 therwise it is in case the Imprisonment were for Debt. *Per Roll's
 Rep. Part 2. p. 187.*

But if a Man shall forcibly get, and keep Possession of a House, and
 the other shall come in the Night and fire this House, they within
 cannot justify to shoot and kill him, or any of his Company, for that
 they in the House were there unlawfully. See *Crompt. 26.*

F. Cor. 305. Co. 5. 91. If one cometh (in the Day-time) to my House, to beat me, and
 doth make an Assault upon me in my House, and fighteth with me,
 and I kill him in Defence of my Person; yet in this Case I shall forfeit
 my Goods, and must have the King's Pardon, except it be found,
 that the Assailant came with a felonious Intent to kill or rob me.

And if one cometh (in the Day-time or in the Night) to enter into my House, pretending Title thereto, and to put me out of my Possession, and I kill him: This seemeth to be Manslaughter in me.

Note, If he kill a true Man, in Defence of his Person, there ought to be so great a Necessity, that it must be esteemed to be inevitable, or otherwise it will not excuse, but that it is Felony, although that the other pursues him; and therefore he that shall be assaulted by a true Man, must first fly as far as he can, and till he be letted by some Wall, Hedge, Ditch, Press of People, or other Impediment; so as he can fly no farther without Danger of his Life, or of being wounded or maimed; and yet in such Case, if he kill the other, he shall be committed till the Time of his Trial, and must then get his Pardon for his Life and his Lands, (which Pardon notwithstanding he shall have of Course) but he shall lose and forfeit his Goods and Chattels; for the great Regard which the Law hath of a Man's Life. *Fitz. Crim. 116. Co. 5. 91. b.* See hereof *Paulo antea, tit. Felony by Misadventure.*

The P-
mally.

§. 1.
Se Defen-
dendo.

A. maketh an Affray upon *B.* and striketh *B.* and *B.* flieth so far as he can for saving his Life, before any Stroke given by *B.* and *A.* continueth his Assault; whereupon *B.* doth also strike *A.* and killeth him. This is Homicide in his own Defence; otherwise it seemeth to some, if *B.* had struck the first Blow, or had struck before he had fled; and yet by other good Opinions, the first Stroke or who began the Affray, is not material; but the whole Matter will consist upon the inevitable Necessity (*sc.* whether the said *B.* who killeth *A.* could not have escaped with his Life, &c. without killing *A.* for otherwise it will not excuse *B.* for *Cuncta prius temanda.* And as it is a charitable, so it is a safe Principle (in these Cases) not to use an Extremity, till thou hast tried all Means.

Co. 5. 91.
4 H. 7. 2.
6 E. 1. c. 9.
P. Pardon
Stamf. 15.

Also it is holden in the former Case, if *B.* (before he had fled) had stricken *A.* and given him divers Wounds, that yet if he fly to a Strait before he give *A.* the mortal Wound, and then he giveth his Death's Wound; this is Homicide in his own Defence.

F. Cor.
284 & 286.
Stamf. 15.

But in the former Case, if *B.* upon Malice prepened had first stricken *A.* and then *B.* flieth to a Strait or Wall, and *B.* pursueth him, and striketh him, and *B.* killeth *A.* thereupon. This is Murder in *B.* for the Malice prepened was the Ground and Beginning hereof.

F. Cor.
387.
Crompt.
22, 28.

Yet if there had been former Malice between *A.* and *B.* and they meet suddenly, and *A.* assaulteth *B.* and *B.* before any stroke by him given, flieth so far as he can; and *A.* pursueth him, and then *B.* killeth *A.* This seemeth to be Homicide in his own Defence, notwithstanding the former Malice.

Copstone's Case: There was Malice between *Copstone* and one *S.* and they had fought divers Times, and after met suddenly in *London-street*, and *C.* told *S.* that he would fight with him, and *S.* answered, that he had nothing to say unto him; and *S.* went to the Wall, and after *C.* assaulted *S.* and then *S.* struck and killed *C.* and it was found that *C.* began the Affray, and *S.* was thereupon discharged, without forfeiting any Thing. But that was by Virtue of the Statute of 24 H. 8. c. 5.

15 El.
Crompt.
27.

A Man in Fight falleth to the Ground, there his Flying, &c. is not necessary, &c. See hereof before.

Also if a Thief assaults me to rob or kill me, I am not bound to fly to a Wall, &c. as I must in case a true Man assaults me.

If

Co. 9. 98. If an Officer of Justice or Minister of the Law, in the Execution of his Office, be assaulted, he is not bound to fly to a Wall, &c. as other Subjects are.

Also the Servant may justify the Killing of another, in Defence of *Servant* his Master's Person or House; if the Hurt cannot be otherwise avoided. *Br. Coron. 63.*

21 H. 7. 35. Also the Servant may justify the Killing of him, who robbed and killed his Master, so that it be done presently.

In the Defence of the Possession of my Goods, I may justify to beat him that shall wrongfully take them from me; but I cannot justify to kill him, except he be a *Thief*.

23 Ed. 1. So then, to kill a *true Man in Defence of my Person*, in Case where
P. Forester there is an inevitable Necessity, (*sc.* that I first shall fly so far as I can
4. for saving my Life, &c.) This is no Felony, &c. But otherwise it is
Stamf. 13. to kill a *true Man in Defence of the Possession of my House, Lands or*
14. *Goods*, that is Manslaughter (at least) as it seemeth.

Hob. 159. " In case of Killing a *Man se Defendendo*, there must be *extrema*
" *necessitas*; for if a Man flying see a Place, beyond which he cannot
" go, and before he come there, kill his Pursuer. This is not justi-
" fiable, for he must go to the utmost Place before he strike.

" Sir Francis Bacon taketh this Difference in these former Cases of
" *se Defendendo*, *sc.* When the Law doth intend some Fault or Wrong
" in the Party that hath brought himself in the Necessity: This he
" calleth *Necessitas culpabilis*, and saith this to be the chief Reason
" why *se ipsum defendendo* is not Matter of Justification, but he must
" sue out his Pardon, and shall forfeit his Goods, because the Law
" intends it hath a Beginning upon an unlawful Cause; for Quarrels
" are not presumed to grow without some Wrongs in Words or Deeds,
" and so Malice on either Part; and it is hardly triable in whose De-
" fault the Quarrel began: But where I kill a Thief that attempts to
" rob me (and the like), here there can be no Malice or Wrong pre-
" sumed on my Part. *Ba. 33.*

Cromp. 30. If any Forrester, Park-keeper or Warrener, or any in their Compa-
ny, shall kill an Offender in their Forrest, Park or Warren, which *Forrester,*
(after Hue and Cry levied to keep the Peace, and to obey the Law) *&c.*
will not yield themselves, but will fly, or defend themselves by Vio-
lence; this is no Felony: Yet *quare*, if there were any former Malice *Warrener.*
in such Keeper. But if any such Keeper, by Reason of any former
Malice, will lay to any Man's Charge, that he came to do hurt;
whereas he did not, neither was found wandering nor offending, and
so kill him; this is Felony in such Keeper.

And so in the former Cases, where a Man is slain for the Execu-
tion of Justice, *sc.* when the Offender shall disobey the Arrest, resist-
eth or flieth, and so is slain; as also where a Man shall be slain by
an Officer or other Person, in keeping or preserving the Peace; yet if
such Manslaughter or Killing of such an Offender, be committed witi-
ngly, willingly, and of Purpose, under Colour of Execution of Ju-
stice or Keeping of the Peace; this is Felony. See the Statute of
1 Jac. c. 8.

C H A P. CLI. Vide XCIX.

Burglary.

§. 1. **Burglary** is derived from two French Words, *Burg* (a Village or a Farm-house), and *Larron* a (Thief); and so in the natural Signification, is the Robbing of a House: But in our Law it is taken to be, when one or more in the * *Night-time*, do break or enter into another's Dwelling-house feloniously, wherein some Person is, or a Church, or the Walls or Gates of a City or walled Town, with an Intent to rob or to do any other Felony, although he or they do not execute the same, or do take or carry away nothing; yet it is Felony of Death, and the Offenders shall not have the Benefit of their Clergy. *Dyer* 99. *Staff.* 30. *Fitz. Coron.* 185, 264.

And if the Intent or Fact of this Offender be to steal; this is like Robbery, If to murder, it differeth not much from Murder, and so of other Felonies. *West.*

§. 2. **First for the Time:** Burglary cannot be committed in the *Day-time*, but only in the *Night*; for all Indictments of Burglary be, *Quod nocturno fregit*: And the *Night* (to this Purpose) beginneth at the Sun-setting, and continueth to the Sun-rising: And therefore to break a House, &c. after the Sun-setting, and before it be dark; or after Day-light in Summer, and before the Sun riseth, is Burglary. *Br. Cor.* 185. *Staff.* 130. *Co. 11.* 36. *21 H.* 7. *See the Title Watch.*

§. 3. **Next, for the Manner:** It is holden, That if a Man break the House to do Felony, and yet entreth not, it is no Burglary; and that the Indictment must be, *Fregit & intravit*. And yet by the Opinion of *Shard.* 27 *Aff.* 38. and of *Sir Anth. Brown*, *Sir Edward Montague*, and *Sir Rob. Brook*, late Chief Justices of the *Common Pleas*, and others, (as *Mr. Crompton* reporteth) if a Man do but attempt to break or enter into a Dwelling-house by *Night*, to the Intent to rob, or kill any Person there, though he make no actual Entry, yet it is a full and compleat Burglary: For in such Cases *Voluntas reputabitur pro facto*. *Staff.* 30. *Dyer* 99. *Br. Cor.* 106. *Crompt.* 21, 32, 33.

As to put back the Leaf of a Window with his Dagger.

To draw the Latch of the Door.

To turn but the Key, being on the inner Side of the Door.

So to break the Glass-window, and to draw out any Goods there with an Hook, &c. 26 *El.* at *Staff. Affizes.* *And. part* 1. p. 114.

So to break a Hole in the Wall, and to shoot in thereby at any within the House. *Anders.* part 1. p. 114.

So (the Door being opened by some of the House) if any of the Attempters shall discharge a Dagg against any in the House, holding his Hand over the Threshold, though he set no Foot over.

“ But if Thieves come to a House, and some within open the Door, and one of the Thieves shoot at the Man, and miss him, and the Bullet breaks the Wall of the House. This is not Burglary. *And. part* 1. p. 114.

“ Or, if they have a Hole in the Wall, and perceive a Man to come by with a Purse, or any Thing else in his Hand, and snatch it away: This is Burglary. *And. part* 1. p. 114.

“ This is Burglary. So one came to a Gentleman's Window, and saw a Cabinet with Money in it, and pulling it to him, took out the Money, he was executed for it.

So if upon an Attempt of Burglary, they within the House shall cast out their Money for Fear, and the Attempters take it away.

And yet there is no actual Entry made in any of these Cases.

But if a Thief setteth but his Foot over the Threshold, or into any Part of the House, to commit Felony, 'or shall for that Purpose but put his Hand in at the Window, or at any Hole in the Wall; this shall convict him of Burglary.

Crompt.

Also one being let down the Chimney in the Night, to commit Felony, it was adjudged Burglary by Sir R. Manwood, Chief Baron, and yet he broke not the House.

So it is to come into the House by the Help of a Key.

So if suddenly one come into the House by Night, the Doors being open, and the Owner flieth to his Chamber, and the Offender is taken moving at the Chamber-door.

So it is, if Thieves pretending that they be robbed, &c. shall come to the Constable, and pray him to make Search for the Felons, and going with the Constable into a Man's House to search, they rob the good Man of the House. This is Burglary.

21 Eliz.
Terms 34

So if a Servant conspiring with another to rob his Master, shall open his Master's Door or Window in the Night, and the other entreth thereat; this is Burglary in the Stranger, by the Opinion of Sir Roger Manwood; and the Servant is but a Thief, and no Burglar.

And yet the House was not broken in any of these Cases.

If a Thief find the Door open, and cometh in by Night, and robs the House, and be taken with the Manner, and breaks a Door to escape; this is Burglary: Yet the Breaking the Door was without any felonious Intent, but it is one intire Act. Sir Fr. Ba. 65.

If a Man in the Night entreth into the House by a Hole, or at a Wall broken before, and taketh away any Thing, or to the Intent to do any Felony, it is Burglary.

But if one cometh into my House in the Day, and there hideth himself till Night, and then robbeth me; or if I shall lodge one in my House, and in the Night he robbeth me (sc. goeth out of my House, and taketh away some of my Goods with him), yet this is no Burglary, for that he broke not my House. For the first Case it was so holden at Derby. Aff. 32. El. Crompt. 34. See *hic postea*. Quare of his Opening the Door to go out and escape, if that shall not make it Burglary.

11 H. 4. 13.

Also if divers come to commit Burglary, and but one of them entreth, and commit it, the rest standing about the House or not far off, to watch that no Help shall come: This is Burglary in all that Company.

But Mr. Finch (*lib. 2.*) describeth Burglary to be the Breaking and Entry of a House in the Night, with a felonious Intent to kill or steal, although no Man be killed, nor any Thing stoln.

Now concerning the Place, it may be either publick or private; § 4
publick, as the Church or Walls, or Gates of a City, or a walled *The Place*
Town; private, as a Dwelling-house. And it is no Burglary, unless some Person be at that Time within the House.

And part

1. P. 302.

And yet An. 36 Eliz. Term. Pasch. at an Assembly of all the Justices at *Serjeants-Inn* it was resolved, That the Breaking of an House in the Night, with an Intent to commit Felony, is Burglary, altho' that no Person be within the House; for the Law is, That every Man ought to be in Security or Safety in the Night; as well for their Goods, as for their Persons; and that the antient Precedents are, *Quod domum noctanter felonice & burg. fregit*, without saying *Domum mansionalem*,
or

or that any Person was in the House; and that the Reason why of late Times these Words have been put into the Indictment (*sc.* that some Person was in the House) was, for that in such Cases the Benefit of Clergy was taken away: But now by the Statute 18 *Eliz.* 6. Clergy is taken away in all Cases of Burglary; and therefore the Judges then all agreed from thenceforth to put the same in Execution accordingly. I have seen it thus reported out of a Book of *Popham*, late Lord Chief Justice of the King's Bench.

And if a Man hath a Dwelling-house, and he and all his Family (upon some Occasion) are Part of the Night out of the House, and in the mean Time one cometh and breaketh the House to commit Felony; this is Burglary. Co. 4. 46.

So if a Man hath two Dwelling-houses, and sometimes dwelleth in the one, and sometimes at the other, and hath a Family of Servants in both) and in the Night when his Servants are out of the House, the House is broken by Thieves; this is Burglary. Adjudged 38 *Eliz.*

I have also seen a Report of Judge *Popham*, that *Termino Trin.* 36 *Eliz.* It was resolved by the Judges, that if a Man had two Houses, and dwelt sometimes in the one, and sometimes in the other; if that House wherein he neither then was, nor had any Servants, were broken, &c. That this was Burglary, although no Person then dwelt or were therein.

If one breaketh a Chamber in *Lincolns-Inn*, (or in any other House of Court or *Chancery*, or in any College in *Cambridge* or *Oxford*, &c.) in the Night, to the Intent to commit Felony there, this is Burglary, altho' there were no Person in the same Chamber: For the Colleges and Houses of Court and *Chancery* be intire Houses, whereof such Chamber is Parcel; so that if any Person shall be in any other Chamber within the same House or College at the same Time, it is Burglary. Crompt. 33.

One *P.* was arraigned of Burglary, 22 *Eliz.* for that he assaulted one of his Companions of the *Inner Temple*, *London*, in his Chamber, there to have killed him in the Evening, &c. But had his Pardon.

A Servant who lieth continually within his Master's House, openeth the Doors in the Night to rob him; this is Burglary. *Let. Mr. Cook*, 32. Crompt. 2 E. 6.
tempore H. 8. See *his antea.*

A Man cometh as a Guest to eat and drink in the Day-time, and there stayeth till Night, and in the Night-time breaketh his Chamber, or any Part of the House to rob his Host; this is Burglary. *Ibid.*

A Guest cometh to a common Inn, &c. and the Host appointeth him his Chamber, and in the Night the Host breaketh into his Guest's Chamber to rob him; this is Burglary. *Ibid.*

Also the Breaking (in the Night) of a Stable, Barn, or other Out-house adjoining to, or Parcel of, or near to the Dwelling-house, to the Intent to steal, is Burglary, though he take nothing. Br. Cor. 180. Lamb. 256.

At Summer Assizes at *Cambridge*, *An. Dom.* 1616. two Men were arraigned and condemned for Burglary before Sir *James Altham* Knt. for Robbing a Back-house of *Robert Castle* Esq; in the Night; which Back-house was some eight or nine Yards distant from his Dwelling-house, and only a Pale reaching between them: So that altho' this Offence be not committed in the very Body of the Dwelling-house, but in some other House near unto it, and being Parcel of or belonging to the Dwelling-house, it is Burglary. Co. 11. 37.

But a Booth or Tent in a Fair or Market, are not esteemed in Law for a Dwelling-house, nor the Breaking thereof in the Night-time to

be Burglary; although the Robbing of them be made as penal as Burglary, if the Owner, his Wife, Children, or Servants were within the same.

Lastly, (to make it Burglary) the Purpose and Intent for which the Offender cometh, must of Necessity be to kill or rob some Person, ^{§. 5.} *The Intent.* (or to commit some other Felony) otherwise it is neither Burglary nor Felony.

^{13 H. 4. 7.} And Therefore to break a House in the Night, to the Intent to ^{Fitz. Cor. 267.} kill any Person therein, is Burglary, although he never touched him.

^{18 & 264.} So it is, if the Purpose were to rob, although the Offender taketh ^{Stamf. 10.} away nothing. ^{Co. 11. 13.}

But if a Man break and enter an House by Night, of Purpose only to beat a Man, this is but Trespass. *Abr. d'Ass. 75.*

^{Lam. 260.} And if the Intent were to commit a Rape, which some think to ^{Crom. 22.} be no Felony by the Common Law, but only a Trespass, then there ^{Rape, See after here cap. 107.} is some Doubt, saith Mr. *Lambert*. And Mr. *Crompton* saith, that if a Man breaketh another Man's House in the Night, and ravisheth a Woman there, this is no Burglary; for (saith he) Ravishment is no Felony by the Common Law, as Burglary is, although it be Felony at this Day by the Statute: But it may seem by Mr. *Bracton*, *Glanville* and *Stamford*, that by the Ancient Common Law it was Felony. ^{Rape.}

^{Stamf. 21.} The Words of Mr. *Bracton*, lib. 2. are thus, *Olim quidem corruptores virginitatis & castitatis suspendebantur, &c. modernis tamen temporibus aliter observatur, quia pro corruptione virginis amittuntur membra, &c.* And a Little after, *Adelstanus; Raptus mulierum ne fiat, defendit tam lex humana quam divina: Et sic fuit antiquitus observatum, quod si quis obviaverit solam, cum pace dimittat eam, &c. Si autem contra voluntatem suam, &c. jactat eam ad terram, foris faciat gratiam suam, &c. Quod si concubuerit cum ea de vita & membris suis incurrat damnum, &c.* And with this Mr. *Glanville* also agreeeth, fol. 112. & *Co. L. sett. 190.* Note, that the Words, *De vi* ^{Felony} *& membris suis incurrat damnum*, do imply the Offence to have been Felony of Death, *Br. Cor. 204. Vide Co. L. 391.*

Also amongst the Laws of *S. Edmond*, sometimes King of this Realm, you shall find this Law, *Qui cum Nunna vel sanctimoniali fornicetur, emendetur sicut homicida: A multo fortiori*, then saith Mr. *Stamford*, shall he be punished if he had ravished her. So as Rape at the first, (saith *Stamford*) was grievously punished, until the Time of King *Edward* the First, who seemed to mitigate the Pain thereof by the Statute of *West. 1. cap. 13.* which gave two Years Imprisonment and fine; but spying the Mischiefs ensuing upon the said Law, ^{Westm. 2.} at his next Parliament holden at *Westminster*, called *West. 2. cap. 34.* he made the Offence of Rape to be Felony again. *Br. Coron. 204.*

^{Crom. 33.} Note also by *Britton*, fol. 17. It is no Burglary in an Infant under ^{See Pl. 19.} fourteen Years of Age, nor in poor Persons, that upon Hunger shall enter a House for victual under the Value of twelve Pence, nor in natural Fools, or other Persons that be *non compos mentis*; but for Poor entring for Victual at this Day, it is Felony in them.

Unc' si pur conversatione de vie, home emble viands de satisse son present hunger, ceo nest Felony, nec Larceny. Car necessitas inducit privilegium quoad jura privata. Stamf. Sir Fr. Ba. 29. & hic postea.

And as for Infants, see *hic cap. 95, & 104.*

Robbing a dwelling House in the Day-time.

He who feloniously takes Goods out of a dwelling House, any Person being within and *put in Fear*; or he who shall rob any dwelling House in the Day-time, any Person being therein, or be accessory to the same; or he who shall break any dwelling House, *Shop, or Warehouse* thereunto belonging in the *Day-time*, and feloniously take away any Goods to the Value of 5 s. tho' no Person be therein; or he who shall counsel, hire, or command another to commit Burglary, shall not have his Clergy.

Discovering two or more Burglars.

He who commits Burglary, or any other Crime, for which the Benefit of Clergy is taken away by the Statute 3 & 4 Will. *aforesaid*, and (being out of Prison) shall discover two or more Offenders, and convict them, he shall have his Pardon, which shall be a good Bar to any Appeal.

Prosecuting and convicting a Burglar shall have 40 l.

He who apprehends and prosecutes an House-breaker to Conviction, shall within one Month afterwards upon producing a Certificate of the Judge before whom he was convicted, receive 40 l. of the Sheriff of the County, * without any Deduction for every Offender so convicted.

Entering a dwelling House by Day, and not breaking it.

He who enters into a dwelling House, either by Day or by Night, without breaking it, with an Intent to commit Felony, or being in the House, commits any Felony and in the *Night-time* breaks it to get out, is guilty of Burglary without Benefit of Clergy.

Stealing to the Value of 40 s. out of a dwelling House, the not breaks open.

Stealing Goods to the Value of 40 s. or more, being in the dwelling House, or Out-house, tho' it was not actually broke open; and tho' any Person or no Body was therein; and likewise the Aider and Abettor shall be guilty of Burglary, without Benefit of Clergy.

C H A P. CLII. Vide 100, 155.

Theft.

THEFT is the fraudulent Taking away of another Man's moveable Personal Goods, with an Intent to steal them, against (or without) the will of him whose Goods they be: And this is of two Sorts, Robbery and Larceny. See *Larceny postea*, cap. 10.

Note, that *le tortious prisel de biens, ove probable pretence de Title ne que Trespass*.

Et nota, quod leges civiles furtum manifestum judicant per redditionem quadrupli: Et furtum non manifestum per dupli compensationem. Dr. Com. 199, Et *oid. Ex. 22*, where if the Party were not able to make Satisfaction, he was to be fold for the Theft.

C H A P. CLIII.

Robbery.

Robbery (in Latin called *Rapina*) is properly the *Felonious Taking* Dyer 824.
 any Thing from the Person of another, or in his Presence, Stamf. 17.
 gainst his will, by Assault in the Highway, or elsewhere, and putting Co Finch.
 him in Fear thereby: And here although the Thing taken, be but the
 Value of an Half-Penny, yet it is Felony; for which the Offender
 shall suffer Death, without Benefit of Clergy.

As if one by the Highway assaulteth me, and taketh away my
 Purse, Money, or other Goods;

§. 2.
 But if a Thief assault me to rob me, and biddeth me deliver my Ed. 4. 28.
 Purse, but taketh nothing from me (in regard that I being too hard Stamf. 29.
 for him, shall apprehend him, or shall levy Hue and Cry, whereby
 he is taken) this is no Robbery nor Felony at this Day: For altho' In-
 tent may make a Man guilty of Treason (as you may see here before,
 Title *Treason*) yet in Case of Felony, there must be an Execution of
 that which was formerly intended, and resolved to be done, *viz.* to
 kill the Party, or to steal or take away the Thing, &c. And therefore
 in *M. Plow. fol. 259. b.* *Walsb.* Serjeant saith, *Que intent de faire tort,*
sans del aēt fait nest Punishable in n're Ley, nec le Resolucion, &c.
mez le fesans de l'aēt est le sole point que nostre Ley respectt.

And yet the Assault (yea, to lie in wait) only to rob me, hath Stamf.
 been in former Times holden to be Felony, as appeareth by the Books, 171.
27 Aff. p. 38. & 13 H. 4. 7. 25 E. 3. 42. Fitz. Coron. 132. & 267.
Br. Coron. 106. 215.

§. 3.
 And so the Intent to commit Burglary (or Murder) hath been hol-
 den to be Felony; for the Will was reputed for the Deed. *Vide 27 Aff.*
38. Fitz. Coron. 383. & Stamf. fol. 17. a. But the Law is otherwise at
 this Day.

In this former Discription of Robbery, the Word (*Taking*) is large- 30 Eliz.
 ly to be extended against the Offender. So that although the Thief Crom.
 taketh nothing from my Person, yet if he assaulteth me, and upon his 341.
 Assault he threatneth to kill me, if I deliver him not my Purse; and
 thereupon I cast my Purse down, and he taketh it away; this is Rob-
 bery.

So if one draws his Sword upon me, and biddeth me deliver my Crom. 34.
 Purse, and I refuse, and after he prays me to give him a Penny, and I
 do so; yet it seems this is Robbery: For by the Assault I was put in
 Fear, and out of that I gave him this Money to be rid of him.

So if a Thief do only assault me to rob me, and I deliver him my 171.
 Purse with my own Hand; yet this is Robbery, in Regard this Fact of
 mine proceeded from Fear, or by his Menacing, &c.

So in flying from the Thief, I cast my Purse into a Bush to save it, Stamf. 37.
 and the Thief seeth me; and taketh it away, this is Robbery; for in-
 this Case had they not put me in Fear, I should not have cast my Mo-
 ney from me.

So if one assaults me to rob me, and I flying away from him, my Hat falleth off, and the Thief taketh it up, and carrieth it away; this is Robbery. *Crom. 35.*

So if a Thief biddeth me deliver my Purse (without drawing any Weapon, or other Force used) and I deliver him my Purse, and he finding but two Shillings therein, delivereth it me all again; yet this is Robbery. *20 Eliz. Crom 34.*

So if Thieves do take a Man, and by Threats compel him to swear to bring them Money to such a Place (at another Time) or else that they will kill him, and he bringeth the Money accordingly; this is Robbery. *Term. Pasch. 36 Eliz. 44 E. 3. 14. 4 H. 4. 3. Stamf. 27.* It was adjudged accordingly.

One came to a Fisherman, going in the Highway to Market with Fish to sell, and desired to buy some Fish of him, and he refused; whereupon the other took away some of the Fishes against his Will, and gave him more Money for them than they were worth; but the Fisherman was thereby put in Fear: Whereupon the other was indicted, and arraigned at York about 26 Eliz. But Judgment was respited, for that the Court doubted whether it were Felony or no. *Crom. 35.*

§. 4. *Person.* Also, in the former Description of Robbery, the Words *from the Person* are not so nicely to be construed, that (to make up Robbery) the Goods must needs be annexed to the Body of the Person; for in some Cases it may be Robbery, notwithstanding the Thief doth neither take the Goods from the Person of the Owner, nor yet assault him.

As if in my Presence a Felon taketh away my Goods openly against my will, this is Robbery, though he neither taketh them from my Person, nor assaulteth me: for the Loss is the same, and the Fear alike, as though it had been from my Person. *Stamf. 27. Lamb. 365.*

And if one or more do take a Horse out of my Pasture, or drive my Cattle out of my Ground, I standing by, and looking on at the same Time; this is Robbery, tho' the Felon doth neither make an Assault or put me in Fear. *P. R. 131.*

§. 5. *Fear.* Note, to make it Robbery, the Person must be put in Fear: For if a Felon doth take Money from me in the Highway, and shall not put me in Fear; this is no Robbery, *Lamb. 266. Cromp. 35. P. R. 131.*

And you shall find a Case in my Lord Dyer, how a Felon did take Money, to the Value of forty Shillings, or above, from the Person of another in the Highway, and yet for that he did not put his Person in Fear, by Assault and Violence, this was holden no Robbery, and the Offender was allowed his Clergy for the same Felony. *5 Eliz. Plach lib. 2.*

Note also, if two Thieves shall attempt to rob me, and I flie from them, and one of the Thieves follow me, and the other espying another true Man (but out of the Sight of his Fellow) rides towards him, and robbed him; this was adjudged Robbery in both the Thieves; and yet the one was neither in Sight, or knowing of this Robbery: But because they both came to rob, and at the same Time, this Fact committed by the one, shall be imputed to the other also. It was *Pudsey's Case, 28 El. Crom. 84.*

§. 6. *Cut-purse.* If one shall cut my Purse, or take or pick my Purse out of my Pocket secretly or privily and fraudulently; it is Felony without Benefit of Clergy, if it be above the Value of twelve Pence. *8 Eliz. 4. P. Cler. 1. Lamb. 266. Que- Cro. 34. son 35.* If it be under twelve Pence, because it is taken from the Person

Crom.
117.

son of a Man, and the Form of the Indictments are *Insultum fecit*. (*Fitz. Coron.* 430.) Also the Words (8 *Eliz.* 4.) are, That no Person taking any Money or Goods (generally) from the Person of another, &c. shall have his Clergy; and yet by the Opinion of Mr. *Lambert* and Mr. *Crompton*, this is no Felony, unless the Thing taken be of more Value than twelve Pence, but Petty Larceny, for which the Offender is not to have Judgment of Death, and therefore needeth not his Clergy.

PClerg. 1.
Lam. 166.

So if one shall take any Money or other Goods from my Person, secretly without my Knowledge, or by Slight only, I neither being made afraid, nor knowing it (if it be above twelve Pence in Value) it is Felony of Death.

26 *Eliz.*
Crom.
453.

A Man cutteth my Girdle privily, my Purse hanging thereat, and the Purse and Girdle fall to the Ground, but he did not take them up (for that he was espied) this is no Felony; for that the Thief never had an actual Possession thereof, severed from my Person: But if he had holden the Purse in his Hand, and then cut the Girdle (although it had fallen to the Ground, and that he took it up no more) then had it been Felony, (if there had been above twelve Pence in the Purse) for he had it once in his Possession: But these secret and privy Takings from my Person, are no Robbery; for he neither assaulted me, nor put me in any Fear. *Dyer* 224.

And in antient Time, the Offender only lost his right Thumb. See *Fitz. Coro.* 434.

C H A P. CLIV. *Vide* CL.

Larceny.

Larceny (being fetched from the Latin Word, *Latrocinium*) is properly a fraudulent and felonious Taking away another Man's personal Goods, removed from his Body or Person, in the Absence of the Owner, and without his Knowledge or Will. *Bracton*, lib. 3. cap. 17. & 32. saith, *Furtum omnino non committitur, sine affectu & animo furandi*. §. 1.

And Mr. *Finch* (*Tit. Felonies*) saith, That Larceny is the secret Taking the Goods of another, above the Value of twelve Pence, without Pretence of Title.

Ce le tortious prisel de beins, ove pretence de tit. n'est que Trespass. §. 2.

Grand Larceny is when the Goods stoln be above the Value of twelve Pence; and this is Felony, wherein Judgment of Death shall be given upon the Offender, except he be saved by his Book. *Grand Larceny.*

F. Cor.
451.

And yet if the Goods stoln be to the Value of ten Shillings, if the Jury upon his Trial shall find the Goods did not exceed the Value of twelve Pence, then that Offence shall be taken but for Petty Larceny.

West. 1.
c. 15.
Br. Cor.
84 & 85.
Stamf. 24.

Petty Larceny is when the Goods stoln do not exceed the Value of twelve Pence. And for this the Offender shall be imprisoned for some certain Time, and after shall be whipped, or otherwise punished by the Discretion of the Justices, before whom he is arraigned, but it is no Felony of Death at this Day. *Stamf.* 24. And yet by good

good Opinions, the Stealing of Goods to the Value only of twelve Pence hath been holden to be Felony of Death. See *Fitz. Coron.* 178. & *Br. Coron.* 84, 85. & *Forf.* 1. *Doct. & Stud.* 17.

Yet may not the Justice of Peace, before whom such an Offender shall be brought, (out of the Sessions) punish by his Discretion the said Offender for Petty Larceny, and so let him go, but must commit him to Prison, or bail him, to the Intent he may come to his Trial, as in Case of other Felonies; and if upon his Trial, the Jury shall find the Goods stolen to exceed, or to be but twelve Pence in Value, the Offender shall have Judgment to die for the Fault.

But if the Indictment be laid twenty Pence, and the Offender arraigned thereof; yet upon his Trial, if the Jury shall find the Goods to be but of the Value of ten Pence; here the Offender shall have Judgment but as for Petty Larceny. 41 E. 3. *Abr. & Ass.* 70.

* There must be an actual Taking; for felonice abduxit is not good.

Also, although Petty Larceny be not punishable by Death, yet it is a felonious Act, and a felonious Taking; for the Indictment of Petty Larceny must be * *Felonice cepit*: And he shall forfeit all his Goods and Chattels for such a Felony; and there is no Difference either in the Nature of the Offence, or in the Mind of the Offender, but only in the Value of the Thing stolen, which also maketh the Difference of Punishment. 17 H. 7. 22. F. Cor. 218. Bro. Cor. 54. 88. & 219.

And yet by some late Opinions, Petty Larceny is but in the Nature of a Trespass, and then where the Principal is convicted but of Petty Larceny, there can be no Accessaries, and the Procurers or Receivers, knowing of the Goods to be stolen, are not to be dealt withal as for Felony; But to be sent to the House of Correction, or to receive some other Punishment, by the Discretion of the Justices at the Quarter-Sessions. *Quere inde.*

If one shall steal Goods to the Value of four Pence at one Time, and six Pence at another Time, and of three Pence at another Time, which together do exceed the Value of twelve Pence; and that these several Goods be all stolen from one and the same Person, then may they be put together in one Indictment; and the Offender being thereupon arraigned and found guilty, shall have Judgment of Death therefore. F. Cor. 415. Stamp. 24. Crompt. 36. c.

Again, if two or more together, do steal Goods above the Value of twelve Pence. This is Felony of Death in them all; for the Felony in them is several, though the Stealing be jointly done. F. Cor. 404. Stamp. 24. l.

By the Law of God, for Theft the Offender was to yield at least the double Value to the Party robbed; and if he were not able to make full Restitution, then he was to be sold for the Theft. *Exod.* 22.

Leges etiam Civile furtum manifestum judicant per redditionem quadrupli; & furtum non manifestum per dupli compensationem expiari. *Cow.* 199.

Where one hath the Goods by Delivery (as a Carrier) who by Agreement was to carry them to such a Place, which he doth not; or if he doth, and afterwards he takes them away *animo furandi* in such Case the Privy is determined, and 'tis Felony.

Where a Shopkeeper delivers Goods in his Shop to a Customer, Raim. pretending to buy them, and he runs away with them; 'tis Felony, for the Running away shews his Intention to get the Goods *animo furandi*. 275.

C H A P. CLV. *Vide CII.**Theft. Now first for the Manner.*

IN Larceny two Things must concur, *sc.* to take, and to carry ^{§. 1.} away, or to remove the Thing taken, with a Purpose to steal the ^{The Man-} same; for the Indictment must be, *Cepit & asportavit*, or *cepit & abduxit*; and yet in these Words, the Letter is not so much to be insisted upon, as the Meaning, and that for the better Suppressing of Offenders in this Kind.

For although by the Law in Mr. *Glanvil's* Time, *A furto omni-Delivery.*
modo excusatur, qui initium habuerit sue detentionis per dominum
illius rei; yet at this Day it may be Felony, though the Offender take not the Thing, but hath it by Delivery from the Owner's own Hand, and so cometh lawfully to the Possession.

^{13 E. 4. 9.}
^{Stamf. 25.} If a Taverner do set a Piece of Plate before his Guest to drink in, and the Guest carrieth it away; this is Felony: For the Taverner gave him no Possession thereof, but only the Use to drink in it for the Time.

If I deliver Goods to a Carrier (or other Person) and bargain with ^{§. 2.} him to carry them to a certain Place appointed; if he carrieth them ^{Carrier.} to the Place, and then conveyeth them away fraudulently, this is Felony: For the Privity of Bailment was determined when they came at the Place appointed. *Ibid.*

So if the Carrier shall take out Parcel of the Goods; this is Felony. *Ibid.*

Also if the Carrier shall carry them to another Place, and there breaketh them up, and converteth Part, or all, to his own Use; this is Felony. *Ibid.*

But if the Carrier shall sell, or give away, or otherwise embezel the Whole as he received them; this is holden to be no Felony, because it was delivered him. *Stamf. 25. a. Cromp. 36. a.*

And yet in this last Case there is besides the Delivery, a Bargain and Agreement to carry the Goods, and the Delivery was only to that Intent; so that the Property of those Goods did always remain in the first Owner. *Ideo quere.*

But if *A.* lendeth his Horse to *B.* being a Stranger, who rideth away with the Horse; this is no Felony in *B.* by Reason of the Delivery. And so did Sir *John Dodderidge* Knight, give Direction at *Cambridge Affizes, 1617*, upon an Indictment of Felony preferred in such Case. *Quere*, if the Horse had been delivered to a Servant, who rideth away therewith. *Vide postea, sub hoc tit.*

^{7 Jac. c. 7.} If a Clothier shall deliver any Wool or Yarn to his Carder, Spinner, or Weaver, &c. to dress, and they shall convey away, imbezel, or sell any Part thereof; this is no Felony, by Reason of the Delivery, but they shall be punished by the Discretion of two Justices of Peace, by Whipping or Stocking, &c. *Vide antea, Tit. Cloth.*

^{13 E. 4. 9.} So if I deliver my Goods to another to keep, and he fraudulently consumeth them, or otherwise converteth them to his own Profit; this is no Felony, because of the Delivery.

And

And so (it seemeth) if I deliver Money or Goods to *A.* to deliver to *B.* and *A.* flieth away with them, consumeth them, or converteth them to his own Use; this is no Felony, by Reason of the Delivery.

§ 3.
Servants.

If a Man delivers Money to his Servant to keep, or Plate to his Butler, or Vessel to his Cook, or Horse to his Horse-keeper, or Sheep to his Shepherd, and such Servant doth go away with them, this is Felony by the common Law in that Servant (for these Goods were always in the Master's Possession, and kept and used by the Servant to the Master's Behoof). But yet there was much Difference of Opinions herein; for the clearing whereof, in some Part, the Statute 21

21 H. 4. 14.
13 E. 4. 10.
7 H. 7. 12.
21 H. 7. 15.

Apprentices and Servants under eighteen shall be in Case as they were before the making of this Statute.

H. 8. cap. 7. (which was made perpetual, by the Statute of 5 *El. cap.* 10.) provided, That all and singular Servants of the Age of eighteen Years, (other than an Apprentice, which must be understood of such as be bound by Indenture, and by the Name of an Apprentice) to whom any Money, Goods or Chattels, &c. by his or their Master or Mistress shall be delivered to keep of the Value of forty Shillings, or above; if such Servant shall go away with, or shall imbezil, or shall convert to his own Use, any such Money, Goods or Chattels of the said Value, to the Intent to steal the same, or to defraud his Master or Mistress thereof, it shall be Felony. But this must be prosecuted within one Year after the Offence.

21 H. 8. 7.
P. Felon.
10.
Crom. 30.

And now upon the Construction of this Statute of 21 *H. 8.* divers new Questions and Cases have since arose: As,

If a Man deliver an Obligation to his Servant, to go and receive the Money thereupon due; and the Servant receiveth the Money, and then goeth away therewith, or doth convert it to his own Use. This is holden to be no Felony within the Meaning of this Statute, for the Master did not deliver the Money to his Servant.

Dyer 5.

So if a Man delivers to his Servant Wares or Cattle to sell at the Fair or Market, and he selleth them there, and receiveth the Money, and then goeth away with the Money, or converteth it to his own Use: This is no Felony within this Statute; for he had not the Money by his Master's Delivery, neither went he away with the Goods of his Master delivered him.

Dyer 5.

But if the Servant received of his Master twenty Pounds in Gold to keep, which he changed into Silver, and then ran away with that; this is Felony, for that Gold and Silver are both of the same Nature, *sc.* Money.

28 El.
Crom. 35.

And if a Man delivers to his Servant a Horse to ride to Market, or Money to carry to Fair, or to buy Cattle, or other Things, or to pay to another Man, and the Servant goeth away therewith: This was no Felony by the Common Law, by Reason of the Delivery thereof to him by his Master: But *quare*, if it be not Felony by this Statute, for that he went away with the Thing delivered him.

21 H. 7. 15.

If the Goods delivered to the Servant to keep, be under the Value of forty Shillings, and the Servant goeth away therewith, this is holden to be no Felony at this Day *Mex tantum un breach del trust que le Mr. repose in son servant.* But if the Servant shall imbezil, or go away with any Goods of his Master's, which were not delivered to him; this is Felony although they be under the Value of forty Shillings, &c.

If a Man appoint his Servant to take and carry Corn to Market, and to take his Horse to carry the same upon, and the Servant goeth away with

with the Corn or Horſe; this is Felony in the Servant, if the Goods; he ſo goeth away with, be all to the Value of forty Shillings, &c.

But if a Servant waſtefully conſumeth the Goods, and returneth again to his Maſter; this is no Felony. And theſe were the Directions of Sir *Nicholas Hide* to a Jury of Life and Death, upon the Arraignment of a Servant in ſuch a Caſe at *Cambridge Lent Aſſizes, Anno 2 Caroli Regis.*

Dyer 5. And if one of my Servants doth deliver to another of my Servants Goods of mine (to the Value of forty Shillings) and he doth go away therewith, or converteth them to his own Uſe; this is Felony within this Statute, for this ſhall be ſaid my Delivery.

3H. 7. 16. If a Man delivers to his Servant a Piece of Cloth to keep, and the Br. Property 23. Servant maketh himſelf a Garment thereof, and after goeth away Crom. 50. therewith; this is Felony within this Statute: For that the Property is not altered by making a Garment thereof, becauſe the Cloth may be known ſtill. Otherwiſe, it is of Barley turned into Malt, or of Money melted and turned into a Wedge or Piece of Metal, or the like; for that in theſe Caſes the Barley or Money, cannot be known again, but are altered in their Nature and Kind. But *quære*, and ſee the Words of the Statute.

‘ If a Man delivers Goods to one to keep, and after retains the ſame Perſon into his Service, who after goeth away with thoſe Goods; this is no Felony by 21 H. 8. becauſe he was no Servant at the Time the Goods were delivered to him. *Vide Sir Fra. Ba. 39, 40.*

Crom. 50. ‘ If I deliver Goods to the Servant of *A.* to keep, and after I die, and make *A.* mine Executor; and before any new Command of *A.* to his Servant for the Cuſtody of the ſame Goods, his Servant goeth away with them; this is out of 21 H. 8. *Ibid.*

13E. 4. 9. If my Receiver of my Rents receive ten Pounds of my Tenants, and run away therewith, it is no Felony; for the Statute is, *where the Maſter delivereth to keep, &c.*

If a Man delivereth to his Servant the Key of the Chamber-door, and the Servant taketh away his Maſter's Goods in the Chamber (above the Value of twelve Pence.) This is Felony at the Common Law, for the Goods were not delivered.

A Man laid and hid a Purſe of Money in his Corn-mow within his Barn, and after his Servant finding the ſame, took Part of the Money out of the Purſe, &c. And the Servant was therefore indicted and arraigned of Felony, at *Cambridge Summer Aſſizes, Anno Dom. 1621.* before Sir *John Dodderidge.*

‘ If an Apprentice or Servant, under the Age of eighteen Years, ſhall embeziel their Maſter's Goods, which were not delivered to them, nor committed to their Charge, if the Goods ſo imbeziled be above the Value of twelve Pence, it is Felony. But if the Goods be under that Value, it ſeems ſuch Apprentice or Servant, may be ſent to the Houſe of Correction. *Vide hic. cap. 31.*

P. Felony 11. P. Exec. 51. Another Felony there is by the Statute 33 H. 6. cap. 1. in the Servant that ſhall take away or ſpoil the Goods of their deceased Maſter: But this Felony groweth upon their Default of Appearance in the *King's Bench*, after Proclamation; and therefore neither the Trial nor Hearing thereof belongeth to the Juſtices of Peace, becauſe they cannot well take Knowledge of ſuch Default in the *King's Bench.*

§ 4.
Carrying.

The second Thing which must concur (in Larceny) to make it Felony, is the *Carrying away* the Thing so taken; and yet it is not of Necessity that it be clean carried out of the House or Place where it was; but sufficeth, that it be so far removed, that the evil and felonious Intent of the Taker may plainly appear. As,

If a Guest will feloniously take the Sheets, or other Goods of the Inn-keepers, out of the Chamber where he lodgeth, and then (going to the Stable for his Horse) is taken with them, or they be found in some other Room of the House where he had laid them; it is Felony in both Cases, although the Possession of those Goods continued in the Owner. ^{27 Aff. 36. See Stamf. 26. b. Br. Cor. 107.}

So is it, if one taketh a Horse in another Man's Close, with an Intent to steal him, and be apprehended before he hath gotten the Horse out of the same Close; this is Felony. *Lamb. 277. & Cromp. 36 a.*

Taking Money or Reward directly or indirectly to help another to stolen Goods, unless he doth apprehend, or cause to be apprehended, such Felon who stole the same, and bring him to Trial, and give Evidence against him, is guilty of Felony, and shall suffer the Penalty according to the Nature of the Felony committed in stealing such Goods, and in the same Manner as if he had stolen the same. ^{4 Geo. cap. 11.}

Upon this Clause the famous *Jonathan Wilde* was executed, Anno 10 Georgii.

If one takes a Sheep in my Pasture or Fold, or a Calf in my Pen, &c. and killeth the same, and be found or taken doing it, and then begins to flie; this is Felony, though he hath not carried the same away out of the Place where he first took it.

CHAP. CLVI. Vide CIII.

Next, Of what Things Larceny may be committed, and of what not.

§ 1. NOTE, That all felonious Taking of any Thing whereof another hath Property, is Felony. *22 H. 6. Br. Coron. 190.*

Moveable
Goods.

And therefore Larceny may be committed by taking any of the moveable Goods of any Person, as Money, Plate, Apparel, Household-stuff, or Corn, Hay, Trees or Fruit, (that are severed from the Ground) or the like; the Stealing of them is Felony.

Domestical.

It is also Felony to steal any Horses, Mares, Colts, Oxen, Kine, Sheep, Lambs, Swine, Pigs, Hens or Geese, Ducks, Turkeys, Peacocks, and other domestical Birds or Beasts, *18 H. 8. 2.* For the Nature of these Things being tame, (and not Savage) if they shall run or flie away, though out of Sight of the Owner, yet in what Place soever they be found, they cease not to be his, so as whosoever detaineth them from the Owner is punishable by Way of Action.

§ 2.
Wild.

It is Felony also to take some Things that be of wild Nature: As to take young Pigeons which cannot flie, out of another Man's Dove-house or other House; or to take young Hawks, or young Herons, ^{Fitz. 86. l. Stamf. 25. c. 18 E. 4}

out

out of their Nests (or Airies) and breeding in a Park, or other several Ground; so to take *Fishes* that be kept in a Trunk or several Pond: For that the Property of such Things shall be always adjudged in the Owner of the Dove-house, Ground, Trunk or Pond, in as much as Things cannot (of themselves) get out thereof, but that the Owner of such Dove-house, Ground or Pond, may take them at all Times at his Pleasure. 10 E. 4. 17. a. *Bingham*, & 18 E. 4. f. 8. a.

Br. Cor. 92. 22 Aff. 93. Kit. 9. b. 27. b. 22 H. 8. 9. 16 E. 4. 7. a. So of old Doves taken in the Dove-coat (in the Night-time especially;) and so it seemeth of any other wild Beast or Fowl (being of Value) and taken within a Man's House.

At Cambridge Summer Assizes Anno 1627. there were two indicted and arraigned of Felony before Sir Francis Harvey, for taking Fish out of a Net lying in the River, being the several Fishing of Sir Ed. P.

Also it is Felony to take any Swans that be lawfully marked, though they be at large; for a Man hath Property in such. See Co. L. 16. b. 17. a. *Quere*, if they be flying Swans, and not pinioned.

Also for Swans unmarked, if they be domestical or tame, *sc.* kept in a Moat, or in a Pond near to a Dwelling-house, and so be *Domui* or *Manui assueta*, to steal such is Felony. See Co. 7. 17. b. *Hic postea*.

So it seemeth of Swans unmarked, so long as they keep within a Man's Manor, or within his private Rivers; or if they happen to escape from thence, and be pursued and taken, and brought in again. See Co. 7. 16. b.

But if Swans that be unmarked shall be abroad, and shall attain to their natural Liberty, then the Property of them is lost, and so long Felony cannot be committed by taking of them.

And yet such unmarked and wild Swans, the King's Officers may seize (being abroad) for and to the Use of the King, by his Prerogative, they being *Volatilia Regalia*: Also the King may grant them, and by Consequence another Man may prescribe to have them, within a certain Precinct or Place; for it may be intended to have a lawful Beginning by the King's Grant. Co. lib. 7. f. 16. a. b. & 18 a. b.

Also young Swans or Cygnets, belong to both the Owners in common Equality, *sc.* to the Owner of the old Cock, and to the Owner of the old Hen, and the Cygnets or young Swans shall be divided between them. Co. 7. 17. And to steal such Cygnets is Felony; for they shall be of the same Nature with the old Cock or Hen.

10 E. 4. 15. Stamp. 350. Also it is Felony to take a tame Deer which is marked and domestical, especially if the Taker knows it to be tame and domestical, or that it weareth a Bell. 9. 4. Derr.

If a Hart, Buck, or other Beast which hath been wild by Nature, and made tame, and hath at his Neck a little Collar of Leather, or any other notorious Sign, and doth go abroad, and returneth again to the House (of his Master or Owner) at his Pleasure, if he be taken by a Stranger and killed by Night, or in other secret Manner, this is Felony by the common Law. *Crompt. Author des Courts* 167.

But by the Common Law, Larceny cannot be committed by taking savage or wild Beasts, Fowls or Fish, found in their Wilderness and abroad, or at large; as Deer, Conies, Hawks, Doves, Pheasants, Partridges, Herons, Swans unmarked, or Fish that are at Liberty, &c. for no Persons can claim Property in them. *Fitz.* 87. a. *Fi.* 45.

By the Statute *de Foresta*, c. 10. *Nullus de cetero amittat vitam vel membrum pro Venatione nostra*, (sc. *pur tuer Deere le Roy* :) which Branch is but an Affirmance of the Common Law. *Crompt. Author des Courts* 166.

Howbeit by Statute it is now made Felony to hunt Deer or Conies (after some Sort) in a Forrest, Park or Warren; or to take a tame Beast or other Thing in a Park, by Manner of Robbery. See the Statute made 3 Ed. 1. 20. & 1 H. 7. c. 7. *Vide postea Felony by Stat. Tit. Hunting.*

Also by Statute it is Felony to steal, take away, or conceal a Hawk. *Hawk. Ibid.*

But for the better Understanding what the Law is in Things that be *fera natura*, observe these Differences. *Co. 17. b. Fl. 4.*

In some Things that be *fera natura*, a Man hath Right and Property, and in some of them a Right of Privilege.

There be three Manners of Rights of Property: sc.

1. Absolute. This Property a Man cannot have in any Thing which is *fera natura*, but only in such Things as are *domita natura*.

2. Qualified. These Properties a Man may have in Things *fera natura*; and to such Properties a Man may attain by

3. Possessory. Two Means:

1. By Industry: And this may be either by Taking them only, (and yet such Things be his no longer than they be and remain in his Possession or Custody); or by making them tame, (sc. *mansueta, id est, manui assueta*, or *domestica, id est, domui assueta*). But in these last a Man also hath but a qualified Property, sc. so long as they remain in his Possession, and so long Felony may be committed by taking them away; but if they attain to their natural Liberty, and have not *animum revertendi*, then the Property of them is lost.

2. *Ratione impotentia & loci*: As where a Man hath young Goshawks or Herons, or the like, which are *fera natura*, and doth breed (or air) in his Ground, he hath a possessory Property in them; so as if one takes them when they cannot fly, the Owner of the Soil may have an Action of Trespass, *Quare boscum suum fregit, & tres pullos Espercorum suorum, or Ardearum suarum, pretii tanti, nuper in eodem bosco nidificantium cepit & asportavit*. And to take these away, is Felony as aforesaid. 18 E. 4. fol. 8. *Stamf. 25. c. Fitz. 86. l. & 89. k.*

Also note, That my Hawk which is flying at a Fowl, and my Deer that is chased out of my Park, so long as my Servant or Keeper maketh fresh Suit after them, they still remain in my Possession, and the Property is still in me: But if they stray, it is lawful for any Man to take them. *Fi. 45.*

But when a Man hath Beasts or Fowl (that be savage, and in their Wilderness) *ratione privilegii*, sc. by Reason of a Park or Warren, (as Deer, Hares, Conies, Pheasants or Partridges, or the like, which be Things of Warren) he hath no Property in them: And therefore in an Action, *Quare Parcum, or Warrenam, &c. fregit & intravit & 3 damas, lepores, cuniculos, phasianos, perdices, &c. ibidem invent' cepit, & asportavit*, he shall not say *suos*, for that he hath no Property in them, but they belong unto him *ratione privilegii*, (for his Game and Pleasure) so long as they remain in the Place privileged. And if the Owner of the Park die, his Heir shall have them, and not his Executors or Administrators, for that without them the Park (which is

an Inheritance) is not compleat: Neither can Felony be committed by Taking them. *Fis. 86. m.*

Lamb. 270. Neither can Larceny be committed by Taking of Dogs of any Kind, Apes, Parrats, Squirrels, singing Birds, or such like Thing (kept only for Pleasure, and not for any Profit) though they be in the House, and made tame. §. 7. Dogs.

Co. 7. 18. 12 H. 8. 3. Br. Tresp. 407. No not by Taking a Blood-hound or Mastiff, although there is good Use of them, and that a Man may be said to have a Property in them, so as an Action of Trespass lieth for Taking them; yet in regard they are Things of so base a Nature, no Felony can be committed by Taking them.

But yet to take a Dog of any Kind, or other Thing of Pleasure, from the Person of another, or out of the Possession of another, and in his Presence, if it be done with Force or Violence, it amounteth to the Breach of the Peace. And if it be done with Force, and by the Number of three Persons or more, it will amount to a Riot.

Stamf. 37. a. Also it is Felony to steal the Flesh of any tame or wild Fowl, or of any Deer or other Beast that is dead, out of the Possession of another Man.

So it is to pull the Wool from the Sheeps back, or to kill them, and to take the Skin, and leave the Body behind. Sheep and Wool.

So it is to clip or shear another Man's Sheep, and to carry away the Wool; and to brand or mark with his own Brand, or mark another Man's Sheep.

Crompt. 36. But note, that in all these Cases of Felony aforesaid, the Thing so taken or stolen must exceed the Value of 12 d. though some Opinions have been otherwise; also it must be of a Thing personal, and not real.

For the Taking of any real Chattel or Thing is no Felony: As, §. 8. Things real.

Stamf. 25. 10 E. 4. 17. 1. Co. 4. 19. If one cuts down my Tree, or my Corn, and carrieth it away, or pulleth and stealeth my Apples hanging on the Tree, and carrieth them away; these are no Felonies, for these Things be Part of my Freehold, till they be severed.

But if I gather mine Apples, or cut down a Tree or Corn of mine own, then it is Felony, if another Man shall carry them away feloniously.

Stamf. 25. Lamb. 27. 2. Crompt. 26. And by the Opinion of *Mar.* if a Stranger cuts down my Tree or Corn without Title, and another Time after he fetches it away, that will prove Felony, because it was a Chattel severed when he took it. See 12 *Aff. p. 32. Br. Coron. 76.*

Crompt. 37. Stamf. 25. Lamb. 271. 10 E. 4. 6. Br. Cor. 152. Co. 8. 33. Also to take Lead from off a House or Church, will not amount to Felony, for it is Parcel of the House or Freehold.

Also to take away the Evidence of a Man's Land, or any Indenture of Lease, or any Obligation, Deed, Specialty, or other Writings, (be they in or without a Box) it is no Felony, because they cannot be valued; and again, because they concern Inheritance, Chattels real, or Things in Action: Yet if they be in a Box unsealed, it seemeth that the Taking of the Box feloniously is Larceny; but if the Box be sealed, and have Writings within it, the Box shall be of the same Nature as the Writings that be therein. *10 Ed. 4. fol. 16.* Writings.

Stamf. 25. So to take away an Infant in Ward is no Felony.

Stamf. 27. Br. Cor. F. 87. 265. Br. Cor. 176. Also the Taking and Carrying away of such Things whereof the Owner is unknown, in some Cases is no Felony: As the Taking away of Treasure that was hidden or lost, (be it Money, Bullion or Plate) §. 9. The Owner unknown.

or

or of Wreck of the Sea, or Goods that be waived, or Strays (before they be lawfully seised, &c.) it is no Felony; but the Takers away of such Treasure, Wreck, and Waif, shall be punished by Fine and Imprisonment. 22 Aff. p. 10. Br. Coron. 96. Fit. Coron. 187. & 265. Vide Braet. lib. 3. fol. 119 & 120.

And yet where the Goods be *bona cuiusdam hominis ignoti*, or *bona cuiusdam mortui & ignoti*, or *bona Parochianorum*, or the Goods of a Church or Chapel, as (Bells, Books, Chalice, Surplices, Bell-ropes, &c.) (or the Goods of any Corporation in Time of Vacation; in these Cases there be Owners of them to some Purpose, and therefore it is Felony to steal such Goods. Vide Cro. 25.

Digging up
a dead
Body.

One Nottingham digged a dead Body out of his Grave, and took away his Winding-Sheet; this was holden to be no Felony, but punishable as a Misdemeanor, and the Offender was adjudged to be whipped, &c. for it: This was at Cambridge Summer Assizes, Anno 1617.

§. 10.
His own
Goods.

Note also, That a Man may commit Felony by Taking his own Goods: As,

If A. do lend or deliver Goods to B. to keep, and after A. doth take them away feloniously, or privily and fraudulently, (to the Intent to charge B. or to recover Damages for the same against B. by an Action of *Detinue*) this is Felony in A. and yet the Property of the Goods was in him: Yet M. Brook, Coron. 142. maketh a *Quare* thereof.

But if I lend my Plate, or deliver my Goods to another to keep, and he melteth my Plate, or changeth the Fashion of my Goods; now if I should take that Metal or those Goods feloniously, it were Felony in me, because the Property is altered by altering of the Fashion. See a little before.

If the Party robbed taketh his Goods again from the Thief, and suffereth him to escape. Vide postea, tit. Accessaries.

A Man findeth my Purse in the Highway, and being asked for it, denieth it; this seemeth to be no Felony, for he came not thereby at the first feloniously: But by the *Levitical* Law he was to restore the Thing found, with an Addition of the fifth Part more thereto. Levit. 6. 3. 5. Numb. 5. 7.

A Man hath two Chains, the one of Gold, the other of Copper, and he selleth the Gold Chain, and delivereth it, and presently after he secretly conveys away his Gold Chain, and puts the Copper Chain in the Place thereof: This is Felony. Lecture M. Cook.

So if one taketh away my Horse, and leaveth another of his (which is like unto mine) instead thereof, this is Felony. Ibidem.

A Man cometh to my Wife, or to my Servant, with a false Message, Token or Letter made in my Name, and thereby getteth my Goods: Yet this is no Felony, but it shall be punished by the Statute of 33 H. 1. cap. 1. See antea tit. Counterfeiters.

C H A P. CLVII. *Vide CIV.**What Persons are chargeable in Larceny.*

^{27 Aff. 40.} ^{Stamf. 26.} ^{142.} ^{Fl. 12.} **A** Feme Covert doth steal Goods by the Compulsion or Constraint of her Husband; this is no Felony in her. *F. Coron. 160. & Wife*
^{142.} ^{Fl. 12.} *Fitz. Coron. 199. Br. Coron. 108.* For where the Words of the Law are broken by Compulsion, there the Law is not offended, neither shall any Person be damnified for doing a Thing, whereto he is forced or compelled, but such Compulsion shall be a good Excuse in our Law. *Pl. 19. a. b.*

^{Mar. 168.} ^{12.} ^{27 Aff. 40.} ^{See Stamf.} But yet if by the Compulsion of her Husband, she committeth Murder, this is Felony in them both.

^{142.} ^{26.} ^{27.} If a Feme Covert doth steal Goods by the Command or Procurement of her Husband, (without any Constraint) this hath been holden to be Felony in her, *scil.* that the Wife in such Case is a Principal, and the Husband but an Accessary. *M. Bracton* also saith it is Felony; for *Licet uxor obedire debeat viro, in atrocioribus tamen non est ei obediendum*: But *M. Stamf.* and others are of another Opinion. *Stamf. 26. P. R. 130. Br. Coron. 108.*

^{F. Co. 130.} ^{Lamb.} ^{257.} If the Husband and the Wife join in committing Treason, the Necessity of Obedience doth not excuse the Wife's Offence, as it doth in Felony, because it is against the Commonwealth; for *Privilegium non valet contra Rempublicam*. *Ba. 32.*

But if the Husband and the Wife jointly together steal Goods, this shall be taken to be the only Act of the Husband; and such Felony shall be imputed only to him, and not to be Felony in the Wife, by some Opinions. *Vide Stamf. 26. & Lamb. Fitz. Coron. 160. & Ba. 31 & 37.* that the Wife can neither be Principal or Accessary, in regard of the Subjection and Obedience she oweth to her Husband.

And yet *Mr. Bracton* seems to be of another Opinion herein, saying, *Quid erit si uxor cum viro conjuncta fuerit, vel confessa fuerit, quod viro suo consilium prastiterit & auxilium? nunquid tenebuntur ambo? imo, ut videtur.* (And a little after he saith) *Alter eorum potest esse malus per se, & alter bonus; ita uterque eorum possit simul & conjunctim esse malus.*

And again, *Sicut sunt participes in crimine, ita debent esse participes in pana. Ibidem.*

And *Mr. Bracton* seemeth to make this Difference, That although the Wife may conceal her Husband's Offence in Case of Felony, (as also she may relieve and keep Company with him, knowing him to be a Felon) *Consentire tamen non debet Felonia viri sui, neque esse coadjutrix, sed Feloniam & nequitiam viri impedire quantum possit.* And accordingly at Cambridge, at Lent Assizes, Anno 1619. the Wife was in such Case indicted and arraigned with the Husband for Robbing a Wind-mill.

Again at Cambridge, Lent Assizes, 1620. One *William Houghton*, and *Katharine* his Wife, were together indicted and arraigned for Stealing certain Apparel: And the Husband and Wife were indicted for the like at Lent Assizes, Anno Dom. 1624.

Also the Wife is chargeable for Trespas done by her and her Husband together; and therefore it shall be safe for the Justice of Peace, in such Cases, to commit the Wife to Gaol as well as the Husband.

And yet for this Case of a Trespas committed by the Husband and Wife, Sir Fr. Bacon giveth this Rule, *Excusat aut extenuat delictum in Capitalibus quod non operatur idem in Civilibus: sc.* In capital Causes, *in favorem vite*, the Law will not punish in so high Degree, except the Malice of the Will and Intention appear, pag. 36. 37.

But a Woman Covert alone by her self (the Husband not knowing thereof) may commit Larceny, and may be either Principal or Accessary: As if she steal another Man's Goods, or receive the Thief that stealeth them; or shall receive stolen Goods into her House, knowing them so to be; or shall lock them up in her Chest or Chamber, her Husband not knowing thereof: And in such Cases, if her Husband so soon as he knoweth thereof, do forthwith forsake his House and her Company, and make his Abode elsewhere, he shall not be charged for her Offence; whereas otherwise the Law will impute the Fault to him and not to her. P. R. 130. See *Bracton*, lib. 3. cap. 32. Fitz. Cor. 383. See Stamf. 26.

M. Bracton saith farther, *In certis casibus de furto tenebitur uxor, si furtum inveniatur sub clavibus suis, quas quidem claves habere debet uxor sub custodia & cura sua; Claves viz. dispensa sua, arca sua, scrinii sui: & si aliquando furtum sub clavibus istis invenitur, uxor cum viro culpabilis erit, sc. vir si consenserit, vel rem ei Warrantizabit. Ibid.*

Goods are delivered to the Husband to keep, and his Wife stealeth them, it is no Felony. Otherwise it is, if the Husband had delivered them to a Stranger, and then the Wife had taken them feloniously out of the Possession of the Stranger, this had been Felony in the Wife. *Mar. Lett.* 12.

Also the Wife shall not be accounted a Felon for Taking or Stealing the Goods of her Husband: And if the Wife do take her Husband's Goods secretly, and deliver them to a Stranger, knowing thereof, yet this is no Felony in the Stranger. See *Abr. d' Ass. fol.* 71. F. Cor. 455. Br. Cor. 142. Stamf. 27.

But if a Man do take away another Man's Wife with her Husband's Goods against the Wife's Will, this is Felony by the Statute *Westm. 2. c. 34.* as it seemeth: And so if any Man takes another Man's Wife with her Husband's Goods against the Husband's Will, this also is Felony. Br. Cor. 77. Cromp. 35. P. R. 130.

If a married Woman shall deliver to her Adulterer, her Husband's Goods, this is Felony in the Adulterer. *Lecture Mr. Cook.*

And if the Husband commit Larceny, and the Wife knowing thereof, do receive or relieve him, &c. she is not thereby Accessary to the Felony. *Vide postea tit. Accessary.*

Note, that a Woman convicted of or for the felonious Taking of any Money, Goods or Chattels above the Value of 12d. and under 10s. or as Accessary to any such Offences, being no Burglary nor Robbery in or near the Highway, nor the felonious Taking of any Goods from the Person of another privily, shall for the first Offence be branded in the Hand, and farther punished by Imprisonment or Whipping, at the Discretion of the Judge or Justice, before whom she shall be so convicted. 21 *Jac. cap.* 6.

§. 2.
Infant.

If a Servant, by the Compulsion of his Master, steal another Man's Goods, this is Felony in them both, notwithstanding such Compulsion. See more of Servants here before, *sub hoc tit.*

Lamb.
273.

An Ideot, Lunatick, dumb or deaf Person, and an Infant, are chargeable in Larceny, after the same Sort as they are chargeable in Homicide, saith Mr. *Lambert*; yet *quare inde*, and see here before in *Manslaughter*. And yet if an Infant shall commit Larceny, and shall be found guilty thereof before the Justices of Peace, it shall not be amiss to respite the Judgment; and so it hath often been done by the Judges. See *Stamf.* 27. & 3 *H. 7. fol. 1. b. & 12. b. & 35 H. 6. 11. Br. Covert* 80.

At Cambridge Assizes in *Lent* 1619. before Sir *Henry Montague* and Sir *John Dodderidge*, Judges of Assize there, they sitting together upon the Prisoners, an Infant about 14 Years of Age was arraigned before them of Felony, and was found guilty, and upon Demand of his Clergy had the same allowed him, and was burnt in the Hand.

The like was done there at *Lent* Assizes 1624. before Sir *Randal Crew*, Lord Chief Justice. See *Doct. & Stud. fol. 148.*

A Bailiff, &c. distraineth secretly for Rent, and after selleth the Distress, and when the Owner demandeth his Goods which were so distrained, the Bailiff denieth them; this is Felony. *Let. M. Cook.*

If an Escheator or other Officer telleth a Man that he is outlawed, when he knoweth he is not outlawed, and by Colour thereof he taketh his Goods; this is Felony. But if the Party be indeed outlawed, and the Officer cometh to take his Goods, and the other Party sheweth him a *Supersedeas*, and notwithstanding the Officer taketh away his Goods; this is no Felony. *Ibid.*

If an Officer shall levy any Duty for the King without Warrant, this is Felony. *Lecture M. Cook. Vide my Office of Sheriffs, cap. 126.*

So where any Officer shall levy any Duty without sufficient Warrant or Authority, and shall after convert the same to his own proper Use, it seems to be Felony.

C H A P. CLVIII. *Vide CV.**Other Felonies by the Common Law.*11 H. 7. 1.
Co. 4. 20.
Lamb.
262.

Burning of a Barn (which is adjoining to a Dwelling-house) in the Night feloniously, is Felony by the Common Law. § 1.
Burning of
Houses.

So is it to burn a Barn (in the Day-time) having Corn in it, and tho' it adjoined not to the Dwelling-house. *Co. 4. 20.*

3 H. 7. 10.

a.

Co. 11. 19.

Stamf. 36.

Fit. 169. b.

Co. 11. 19.

Stamf. 36.

Burning of any Dwelling-house, or other House, Parcel thereof willingly and feloniously done, is Felony by the Common Law, whether it be done by Night or by Day. *Br. Cor. 135, 155, 226.*

Burning of any other House, or of a Stack of Corn, feloniously, seemeth also to be Felony by the Common Law: For the Words of the Statute of *Westm. 1. cap. 15.* (which Statute seemeth to be but a Rehearal of the Common Law, *Br. Mainpr. 78.*) ordaineth, That such as be taken for House-burning (generally) feloniously done, be not bailed: And of that Opinion seemeth *Mast. Britton*, who wrote presently after the Making of the same Statute; *Britton, fol. 16.* See Statute *Winchest. 13 E. 1. cap. 1. & 28 E. 1. cap. 17.* And it appeareth also by *Britton, lib. 1. cap. 17.* that such Offenders were by the Common Law to have been burned. *Fitz. 269. b.*

The Book called the *Mirror of Justice*, amongst other Capital Offences hath this, *Le crime de Arson*: And he describeth the Offenders in this Sort, *Ardours sont qui ardent Citie, Ville, Meason, Home, Beast, ou auters Chattels de leur Felony in temps de Peace, par pain ou vengeance.*

If a Man will burn his own House willingly, this is no Felony. But if by such Burning he burneth his Neighbour's House, this seemeth to be Felony.

A Man intending to burn another Man's House, casteth Fire thereupon, and after that is kindled and burnt in part, it is quenched; this is Felony, although the whole House were not burnt down.

So it seemeth, if a Man shooteth unlawfully in an Hand-gun, and the Fire thereof setteth another Man's House on fire and burneth it down, this is Felony. *Quare.*

§. 2. *Discovery.* If an Indictor (or Juror) in case of Treason or Felony, shall discover the King's Council and his Fellows, it hath been adjudged Felony. *Vide antea tit. Petty Treason.*

Rescous. Rescuing, or Taking away from an Officer, any Offender, who is attainted, imprisoned, or but arrested for Felony, such *Rescous* is Felony, as well in him that made the *Rescous*, as in him that is rescued. See more here, *pag. sequent.*

Escape. Also when a Man hath arrested another for Felony, and after letteth him go at Liberty, this is a wilful Escape, and shall be adjudged Felony in him that did so let him escape. And in Case of Treason such Escape is Treason. See *paulo postea.*

Breaking of Prison. Breaking of Prison (before the Stat. *De frangentibus prisonam*, made 1 E. 2.) was Felony by the Common Law, for what Cause soever he was in Prison, yea, though he had been imprisoned but for a Trespasse. But now that Statute hath changed the Common Law therein: So that now, if a Man be imprisoned or arrested, or taken for Trespasse, and do make an Escape, or be rescued by a Stranger, this is but fineable at this Day. *Vide Fi. libro 2. & Stat. 10 E. 2. hic cap. 106.*

Abjuration. If any Offender which is adjudged, or otherwise by Law is to abjure the Realm, shall depart, and after such Departure shall return again without the King's Licence; then if the Cause for which he did abjure were Felony, the Offender so returning shall have Judgment of Life and of Member by the Common Law. But if the Cause were not for Felony, then the Offender by the Common Law shall be taken, and only make a Fine to the King. But now see the Statute of 35 E. 3. 1 & 2. where it is made Felony also for Popish Recusants, or other Sectaries, which are to abjure, if after Abjuration they shall return without the King's Special Licence. See *hic postea.*

C H A P. CLIX. *Vide CVI.*

Felonies by Statute.

§. 1. *Conspiracy.* IF any Man, being the King's sworn Servant, &c. shall confederate, imagine, compass or conspire with another to destroy the King, or any Lord of this Realm, or any other sworn to the King's Council, or the Steward, Treasurer or Controller of the King's House, it is Felony:

Felony: But what the Justice of Peace may do herein, see *ante* Tit. Felony.

§ 2. P. Breaking of Prison by one being therein for Felony, or by one be-
Felon. 15. ing a Prisoner for Felony, is Felony. *Breaking of Prison.*

And yet by the Common Law, if the Prison had been broken by the Party himself, it had been Felony, whatsoever the Cause of his Imprisonment were, yea, although it were but for a Trespass. *Vide Stamf. 30. c. & M. Finch lib. 2.*

But now by the Statute 1 Ed. 2. it is no Felony, except the Prisoners were there committed for Felony. *Vide Co. Inst. 2 Part 589.* upon the Statute *de frangentibus Prisonam. Fitz. Coron. 248. Escape non adjudicabitur oers. ipsum qui commiss. est pro transgress.*

Dyer 99. Now every one who is under Arrest for Felony is a Prisoner, and that as well without the Prison as within, or in the Stocks in the High Street, or in the Possession of any that hath arrested him, or that hath the Keeping of him being arrested for Felony. *Vide libro 2. M. Finch.*

And therefore if any Person who is under Arrest for Felony, or Suspicion thereof, (whether he be in the Gaol or out, or but in the Stocks, or but in the Possession of any that hath arrested him) if he shall make an Escape, this is a Breaking of Prison in such Prisoner, and is Felony. *§ 2. Escape.*

§ 3. 17. And yet one committed to the Constable (by the Justice) for Suspicion of Felony, making an Escape from the Constable, was after taken again, and indicted and arraigned for that Felony, and by the Jury of Life and Death was found Not guilty of that Felony, and after was indicted for the Escape: But here, considering the Prisoner was found Not guilty for the first Felony, therefore his Escape from the Constable was holden not to be Felony; and so I have known the Jury directed by the Judge of Assize.

Before the Statute of 1 Ed. 2. if it had not been the King's Prison which had been broken, it had been no Felony, as it appeareth by *Brit. fol. 17.* And with him also agreeth the Book called the *Mirror of Justice, lib. 2.* who saith thus, *Gaole nest' anter chose que common Prison, & nul uerens riels forsq; le Roy: Private Prison est dauter, dont a chescun list de scaper que poet, si non que il face trespas que escape.* *§ 3. Gaol.*

But Note, that at this Day there is no Difference whose Prison the Offender doth break, whether it be the King's Prison, the Lord's of a Franchise, or any other Person's; for the Letter of the Statute is, *Prisonam frangentibus*, and not *Prisonam nostram*: So that whose Prison soever it be which is broken, it is within the Compass of this Statute. *Stamf. 31.*

Also whether it be a common Gaol, or a private Gaol or Prison, yea or but the Constable's House, or the House of any other Person who hath the Custody of him for Felony, there is no Difference; for these are Prisons for the Time, and so within both the Words and Meaning of this Statute.

Also by this Statute the Breaking of Prison is Felony in the Prisoner himself. And yet if the Prison shall be on Fire by Casualty, and they within shall break the Prison for saving of themselves; this is no Felony, but excusable by the Law of Nature. *Plow. fol. 13. b. 14 Hen. 7. 29. Read 15 H. 7. 2.*

§. 4. And if a Stranger doth break the Prison, or open the Stocks, or make a *Rescous*, whereby one imprisoned or arrested for Felony escape; this is Felony both in the Prisoner and in the Stranger, although the Prisoner was never indicted of the Felony. 1 H. 7. 6. 1 Ed. 3. 17. Dyer 99.

By some Opinions, if a Stranger shall disturb the Arresting of a Felon, it is no Felony, except the Felon were taken and arrested, and after rescued: Yet *Fitz. Just. P. fol. 114.* saith, that such Disturbance before Arrest is Felony. 9 H. 4. 1. F. Co. 333. Stamf. 33.

If a Prisoner be rescued at the Gallows, or as he is going to Execution, this is a Breaking of Prison, and Felony within the Statute. And yet Note this Difference: *sc.* that if a Felon, in going to his Execution, &c. be rescued from the Sheriff, this is Felony, if it be presented before the Justices, &c. and so found by Enquest: But otherwise it is, if it cometh in by the Return of the Sheriff, there is no Felony. 1 H. 7. fol. 6. Fitz. Indictment 30.

Escape. If a Gaoler, a Constable, or any other which hath a Prisoner under Arrest for Felony, or Suspicion thereof, voluntarily suffereth him to go at Liberty; (though this be no Breaking of Prison,) yet 'tis Felony in the Gaoler, Constable, or him that letteth such Prisoner escape, but it is no Felony in the Prisoner; but if such a Prisoner shall escape by the Negligence of his Keeper, then the Felony resteth in the Prisoner only, and not in the Gaoler, &c. P. R. 149. 149. 44 Aff. 18. Br. Esc. 31. Stamf. 31.

If any Man arrest another, and after voluntarily lets him go at large, if the Arrest were for Felony, it is Felony in him that so lets his Prisoner go; if the Arrest were for Treason, it is Treason, and if for Trespas, it is Trespas, & *sic de similibus.*

If the Gaoler or Keeper shall marry a Felon which is in his Gaol, this is an Escape: But *Quere*, whether it be Felony in the Gaoler or no.

If a Gaoler shall let a Felon to Mainprise which is not bailable, *dicitur* that this is no Felony, but finable: For although it were voluntary, yet it was *per Ignorance del Ley.* But *Quere* hereof, for that the Gaoler hath no Authority to let any Prisoner to Bail; and the Prisoner being in for Felony, the Sheriff at this Day hath no Authority to bail such a Prisoner, except it be by Virtue of the King's Writ, &c.

If the Constable (or other Officer) shall voluntarily suffer a Thief, being in his Custody, to go into the Water to drown himself, this Escape is Felony in the Constable, and the Drowning is Felony in the Thief, *quia Felo. de se.*

Otherwise, if the Thief shall suddenly (without the Assent of the Constable) kill, hang, or drown himself, this is but a negligent Escape in the Constable.

Voluntary Escape. The voluntary letting of a Felon to escape who is not arrested for Felony, though he knoweth of the Felony, yet it is no Felony; neither can it be an Escape without an Arrest: And yet such an Offender (being an Officer) may for such his Negligence or Default be indicted and fined, as it seemeth by the Words of the Commission. *Quere* if he be not accessory to the Felony. See *Br. Escape 43.* P. R. 149. 150. 9 H. 4. 1. Stamf. 32.

Note, that a Man is always said to be in Prison, so long as he is within the Sight of the Gaoler, or of him that hath him in Custody, though he do break away or escape. Dyer 440.

For an Escape is properly, when a Prisoner shall escape or get out of the View of his Gaoler or Keeper, and shall be taken again by ^{fresh purs-} *fresh Suit*. *Stamf. 33. Br. Esc. 4. & 35.*

And if a Prisoner shall make an Escape (of his own Wrong, and without the Consent of the Gaoler, or other Person that hath him in Custody) tho' he escape out of their Sight, and into another County, yet if he be taken again upon *fresh Suit*, before the Gaoler, &c. be sued, or hath fined for the Escape (though it be seven Years after) yet this is no Escape, as it seemeth, for which the Officer shall be charged; for there is no Prejudice to the King by the Escape, though it be Felony in the Prisoner as aforesaid, and a Breaking of Prison in him, *Co. 3. 44 & 52.* accordeth in Case of a Prisoner taken in Execution, that shall make an Escape of his own Wrong.

If a Gaoler, or other Officer, &c. shall licence his Prisoner to go abroad for a Time, and to come again; this is an Escape, because the Prisoner is found out of the Bounds of his Prison, though the Prisoner return again, according as he shall be prescribed; and so is it, if the Officer shall suffer his Prisoner to go abroad for a Time by Bail, this is an Escape: Yet they are holden in both Cases to be but negligent Escapes in the Officer, and so but finable. But *Quere*, for the Gaoler, and other Officers, ought to keep their Prisoners in *Salva & arcta custodia*. *Vide post. Tit. Imprisonment.* *Co. 3. 44. Stamf. 33. c.*

Note, that the Sheriff of every County shall have the Keeping of, and shall be chargeable and charged with the Common Gaol and Prison of the same County, and with all the Prisoners therein; and must put in such Gaolers or Keepers for whom they will answer, as appeareth by the Statutes, *14 E. 3. c. 10. & 19 H. 7. c. 10.* which also seemeth to have been the Common Law before, as you may see by the Preamble of the Statutes of *14 Ed. 3. & Co. 4. 34.* And therefore the High Sheriff himself shall be answerable for an Escape of a Felon, suffered by his Gaoler, and may be indicted for the same. (See the Precedents in *Lambert, West, Crompton*). And so the High Sheriff, as he hath an Office of great Antiquity, Trust, and Authority (for the Time,) so withal it is a Place of great Peril and Charge; and if the Rigour of the Law should be laid upon them, then should they have a warm Office, and be well rewarded. But in such Cases I have observed the favourable Exposition and Dealing of the Learned and Reverend Judges. First, you shall find in *Sir Edw. Coke's Reports lib. 9. f. 98.* that the Gaolers who have the actual Possession shall be answerable for Escapes, if they have wherewith: Also *Popham* Chief Justice did cause one *Staver* (a Gaoler at *Cambridge*) to be indicted, arraigned, and hanged, for an Escape of a Felon suffered by him. *6 H. 7. 11. Co. 4. 33. West. M. 1. Co. 4. 98. Lam. 11. 5.*

In the *Doct. & Stud. cap. 42.* this Difference is taken; *sc.* that if the Escape were by Default (*sc.* a negligent Escape) of the Gaoler, that the King may charge the Gaoler if he will, or the Sheriff may be charged by Reason of the Statute *14 E. 3. c. 9.* *Temp. El.*

But if it be a wilful Escape in the Gaoler (which is Felony in him) the Sheriff shall not be bound to answer to the Felony. (See there *fol. 135. & 147.*) But there the Sheriff may be fined to the Value of his Goods. *Stamf. 35. b.*

Now an Escape is of two Sorts: *Voluntary and negligent.* *Stamf. 32.* *Voluntary Escape* is, where one doth arrest or hath imprisoned another for Felony (or other Offence,) and after voluntarily letteth him go at Liberty where he will. *Esc. is of two Sorts.*

Negli-

Negligent Escape is, when the Party arrested or imprisoned doth escape against the Will of him that arrested or imprisoned him, and is not freshly pursued and taken again before he hath lost the Sight of him which escaped; the Penalty whereof seemeth to be only a Fine at the Discretion of the Judges or Justices: Yet see *Stamf. 35. k.* a Difference of the Fine: Where the Prisoner is attainted, *le Fine sera C l.* where but indicted C s. and where only taken upon Suspicion, *semble dispunishable.* *Quere & vide F. Coron. 224, 316, 434 & hic infra*, that in Case of a Trespass a *negligent Escape* is finable.

But for *voluntary Escape*, if the Arrest or Imprisonment were for Felony, it shall be adjudged Felony in him which did voluntarily suffer the Prisoner to escape; and if the Arrest, &c. were for Treason, it shall be adjudged Treason; and if the Arrest or Imprisonment were for a Trespass, it shall be adjudged a Trespass; and yet see *Fitz. Coron. 248. & escape, non adjudicabitur pro transgr.* And in Case of Felony there is no Difference, whether the Felon be arrested by an Officer, or by another. See *Br. Cor.*

Also in Case of a Trespass, or other Offence of what Kind soever, (being neither Treason nor Felony) there seemeth no Difference, whether the Escape suffered by the Officer be voluntary, or negligent; but that the Officer in both Cases shall be fined for such an Escape, according to the Quantity of his Fault, by the Discretion of those that shall be Judges of it.

Any Person having the Benefit of Clergy, and being committed to the House of Correction, and escaping, and being re-taken, shall be committed to some House of Correction in the Place where re-taken, without Bail; for no less Time than 12 Months, and not exceeding 4 Years, to be kept to hard Labour. *Anna cap. 6.*

One *Nichols* assaulted *Cholmly* to rob him, and killed him; after *Q. B.* granted *Nichols* his Pardon: But *Cholmly's* Wife having commenced her Appeal against *Nichols*, he was still detained in Prison at the Woman's Suit: After the Gaoler suffered *Nichols* voluntarily to go at large, and so to escape. By the Opinion of *M. Plowden*, this was Felony in the Gaoler, although *N.* the Prisoner were now no Felon to the Queen, in Regard he had obtained his Pardon. *Plow. 476. b.*

A Prisoner, found guilty of Petty Larceny, is adjudged to be imprisoned by the Space of a Month, (for his Punishment) and after the Month he breaketh Prison, and escapeth: *Quere* what this is in the Prisoner, and what in the Gaoler. It is holden that the Gaoler shall be charged with this Escape. But if the Prisoner be discharged (by Judgment) paying his Fees, if he escape, here the Gaoler is not chargeable. The Difference is, the Prisoner in the first Case was by Judgment committed to Prison; and in the last Case he is adjudged to be acquitted of his Imprisonment, paying, &c. and yet he is a Prisoner until he hath paid his Fees. *21 H. 7. 17. a. Br. escape 16. Plow. 465.*

Note, that a *voluntary Escape* is no Felony, if the Act done were not Felony at the Time of the Escape made. As if *A.* do strike *B.* and hurt him mortally, wherenpon the Constables do arrest *A.* and after willingly suffer him to escape, and after *B.* dieth of that Stroke: This Escape is no Felony, either in the Constables or in the Prisoner; yet the Constables shall make a great Fine, yea, shall (or may, at the Discretion of the Judges) be fined to the Value of their Goods (as it seemeth) by *11 H. 4. 12.* and *Stamf. 25. b.* because this Escape was voluntary.

‘ If a Man be wounded, and the Offender is voluntarily let go at large by the Gaoler, and after Death ensueth of the Hurt; yet this is no felonious Escape in the Gaoler. 11 H. 4. 12. Br. 38.

Crompt.
39.

‘ The voluntary Suffering him to escape who hath killed another *se Defendendo*, or by Misadventure, or of him that hath committed Petty Larceny, seemeth not to be Felony; for that these Offences are no Felony of Death; but he that suffereth such an Escape shall be fined only. Crompt. 39. Yet *Quare*, for they that suffered this Escape, are not to judge whether these Offences be Felony or no. See hereof *postea* *rit. Evidence against Felons.*

A Man was taken for Suspicion of Felony, and was delivered to the Constable of G. and after escaped for Want of good Keeping, and the Constable was therefore taken and arraigned; and pleaded, That forasmuch as the Felon was not taken with the Manner, nor at the Suit of the Party, nor indicted of Felony, therefore it was no Escape, &c. And so was the Opinion of the Court then. See 42 Aff. P. 5. Br. Escape 39.

But the contrary was after holden in Case where the Escape was voluntary, although the Prisoner were taken only upon Suspicion. 44 Aff. p. 12. Br. Escape 31. & Dyer 99. that is Felony, although the Prisoner were not indicted of Felony.

4 E. 104.
P. Escape
2.
Stamf. 35.

Note also, where one is a Prisoner by Arrest only, and he doth Escape, there the Escape shall be presented before the Justices of Peace, or other Justices having Authority to enquire of it, before he that suffered the Escape shall answer it, *sc.* before any Thing shall be taken or levied by the Sheriff or other Officer. *Vide* Co. 11. 64, 65. & Stat. Westm. 1. cap. 4.

11 H. 7. 7.
Crompt.
40.
P. R. 151,
152.
Cro. 34.

Note also, if a Man be arrested for Suspicion of Felony by the Constable or other Person, and after they shall have Intelligence that there was no such Felony committed, here they may set the Party arrested at Liberty again, and they shall not be charged with the Escape; for there can be no Felon where there is no Felony committed.

44 Aff. 12.
Crompt.
40.
Cro. 14.

But if a Man be slain, or that there be any other Felony committed, and one is arrested for the same Felony, or for Suspicion thereof, though he that made the Arrest shall after have certain Knowledge that the Party arrested is not guilty of that Offence, yet he or any other may not set the Party so arrested at Liberty; for now he must not be delivered by any Man's Discretion, but by Course of Law: Or otherwise it will prove a voluntary Escape, and so Felony, or at least fineable.

And yet if a Watchman shall take any Man for Suspicion of Felony, he may inquire of his good Name and Fame; and if he finds him to be of good Name and Fame, he may let him go. See the *Old Justice of Peace*, imprinted Anno 1559. fol. 13. But it were more safe for the Watchman to deliver such suspected Person to the Constable, Justice of Peace, or to the Sheriff, according to the Statute of *Winchester*. See *hic antea* *rit. Watch*.

25 E. 4. 3.
36.

If a Justice of Peace shall send for a Felon out of the Gaol, and shall deliver him without Bail, this seemeth to be a voluntary Escape, and so Felony in the Justice; otherwise where the Justice erreth *pro defectu scientie*, as to bail one that is not bailable, this is but a negligent Escape.

If the Justice of Peace or Sheriff shall bail one who is not bailable, this is an Escape. *Fitz. Escape* 3. & *Cor.* 246. *sc.* a negligent Escape, if it be in Ignorance, *ut supra*.

But

But if one that is brought before a Justice of Peace for Suspicion of Felony, shall confess the Felony before the Justice, and yet he shall suffer the Prisoner to go at large without Bail, this is a voluntary Escape, &c. *Vide Cro.* 39.

* *The Act 13 & 14 Car. 2. for preventing Theft and Rapine on the northern Borders of England, which was continued by the Stat.* 12 Annz, cap. 10. and is now near expired, shall be further continued for eleven Years from the Expiration thereof. 10 Geo. cap. 17.

Blackmaile, If any in the Counties of *Cumberland*, * *Northumberland*, *Westmorland*, shall take any Subject against his Will, and carry him out of the County, or to any Place within the County; or detain them, to ransom them, or make a Prey or Spoil of their Person or Goods, or assist, abet or procure such Act; or take or give any Money, Corn, Cattle, or other Consideration, commonly called *Blackmaile*, for protecting, or defending any from such Thefts, or shall burn, or procure to be burned, any Barn or Stack of Corn there. It is Felony. 43 *El.* 13.

CHAP. CLX. *Vide CVII.*

Felonies by Statute.

1. *Annuity Orders*: Counterfeiting or Procuring them to be counterfeited or forged, or knowingly assisting therein, or fraudulently Demanding any Annuity by Virtue of such forged Receipt: Felony without Benefit of Clergy. 9 Geo. 12.
2. *Assurers of Ships*: The Corporations thereof, &c. Counterfeiting their Corporation-Seal, or Altering any Policy, Bill, Bond or Obligation under their common Seal, or Paying such counterfeit Policy, or Demanding the Money therein, knowing it to be counterfeited: Felony without Benefit of Clergy. 6 Geo. 18.
3. *Bail*: Personating another before those who have Authority to take Bail: Felony. 4 Will. cap. 4.
4. *Bank-Bills*: Counterfeiting the Common Seal of the Bank of England, or any sealed Bank-Bill or Note, or Altering or Erasing such Bill or Note: Felony. 8 & 9 Will. cap. 20.
5. *Bankrupt*: Concealing his Effects, &c. Felony without Benefit of Clergy, and the Goods which he forfeits by such Felony, to be divided amongst his Creditors. 4 & 5 Annz, cap. 15. 3 Geo. 12. 5 Geo. 2.
6. *Blacks, &c.* appearing in any Disguise in Parks, Warrens, &c. or Highways, &c. Felony without Benefit of Clergy. 9 Geo. 22.
7. *Buggery* committed with Mankind or Beast is Felony (without Benefit of Clergy) 25 H. 8. 6. 5 Eliz. 17. it being a Sin against God, Nature, and the Law: And in antient Times such Offenders were to be burned by the Common Law. *Fitz.* 269. b. *Fi. lib.* 2. 22, 23.

One describeth this Offence to be *Carnalis copula contra naturam*:

& *hac per confusionem* { *Specierum*; sc. home ou feme ooe brute beast.
 { *Sexuum*; sc. home ooe home, feme ooe feme.

Et ceo poet estre sans penetration: Car le use del corps despend le seede, in tiels cases fait ceo Buggery deins ceo Stat. sans penetration: Et issint fuit tenuis in le case le Seign' A. come jeo oye.

8. **Burning of Houses and Stacks of Corn:** *Vide postea.*

If a Man maketh a Bill or Writing, and layeth or casteth the same ^{Burning.} at another Man's Door, therein threatning to burn his House if he gi- ^{See pl. 52.} veth not some Money, &c. this hath been taken to be Felony. See

Br. Cor. 213. 6 H. 7. f. 13. a. And *quere* what Statute it is that the Book meaneth. Note, by the Statute of 8 H. 6. cap. 6. such Offence was made Treason, if after the Offender did burn the House; but that Statute of 8 H. 6. standeth now repealed.

8. **Clothes:** Wilfully and maliciously Assaulting a Person in the Highway, with an Intent to spoil or deface Clothes, Felony, and to be transported for seven Years. 6 Geo. cap. 23.

8 & 9 Will. 3. cap. 9. 9. **Coin, &c.** Blanching Copper for Sale, or mixing blanch'd Copper ^{Coin.} with Silver, or knowingly Buying or Selling such, or any malleable ^{The Instruments to be seized.} Mixture of Metals or Minerals heavier than Silver, and wearing like Gold, or receiving, paying, or putting off any counterfeit or unlawfully diminished mill'd Money, at a lower Rate than it imports, Felony.

10. **Congregations and Confederacies holden by Masons,** it is Felony ^{§. 3. Congregation.} in the Causers thereof, and fineable in the Masons that come to such Congregations: 3 H. 6. cap. 1.

P. Fel. 19. 11. **Cutting out of any the King's Subjects Tongues,** or putting out their Eyes, of Malice prepensed, is Felony. 5 H. 4. And for these the Offender shall lose his Life, Lands and Goods.

If any Person of Malice forethought, and by lying in wait, shall cut or disable the Tongue, put out an Eye, slit the Nose, cut off a Nose or Lip, or cut off or disable any Member or Limb, with Intention to maim him, or disfigure him. It is Felony in them and their Abettors. 22 & 23 Car. 2. upon this Act Mr. Coke was executed in *Suffolk. Anno 7 Geo.*

12. **Cloth:** Such as shall steal Cloth, or other Woollen Manufactures from the Tentors in the Night-time, and be indicted thereof, shall lose the Benefit of Clergy; but the Judge may order him to be transported; which if he shall refuse to be, or shall return within seven Years, he shall be executed. 22 Car. 2.

22 H. 8. 11. P. Fel. 36. 13. **Cutting or Breaking down of Powdike or other Banks in Marsh-** land maliciously, is Felony. 2 & 3 Ph. & M. cap. 19.

1 Jac. 12. P. Fel. 6, 7. 1. 14. **Conjuration, or Invocation of any evil Spirit,** for any Intent; ^{§. 4. Conjuration and Witches.} or to be counselling or aiding thereto, is Felony without Benefit of Clergy. See *Exod. 22. 18. Deut. 18. 11. & Lev. 20. 27.*

To consult, covenant with, entertain, imploy, feed or reward any evil Spirit, to or for any Intent or Purpose, is Felony in such Offenders, their Aiders and Counsellors.

To take up any dead Body, or any Part thereof, to be imployed or used in any Manner of Witchcraft, is Felony in such Offenders, their Aiders and Counsellors.

Also to use or practise Witchcraft, Enchantment, Charm or Sorcery, whereby any Person shall be killed, pined or lamed in any Part of their Body, or to be counselling or aiding thereto, is Felony: By the antient Common Law such Offenders were to be burned. *Fit. 269. b.* See the Law of God against Witches, *Exod. 22. 18.* and against such as seek to Witches and Wizards. *Levit. 19. 31. & 20. 6.*

U u u

Also

Also the second Time to practise Withcraft, &c. thereby to declare where any Treasure may be found, is Felony.

Or where any Goods lost or stolen may be found.

Or where any Cattle or Goods shall be destroyed or impaired.

Or to the Intent to provoke any Person to love.

Or to the Intent to hurt any Person in their Body, though it be not effected. All these are Felony, *sc.* the second Offence, and without Benefit of Clergy.

Witches. Now against these Witches (being the most cruel, revengeful and bloody of all the rest) the Justices of Peace may not always expect direct Evidence, seeing all their Works are the Works of Darknes, and no Witnesses present with them to accuse them; and therefore for the better Discovery, I thought good here to insert certain Observations, partly out of the Book of Discovery of the Witches that were arraigned at *Lancaster, Anno 1612.* before Sir *James Altham* and Sir *Ed. Bromley*, Judges of Assize there, and partly out of Mr. *Bernard's* Guide to Grand Jurymen.

These Witches have ordinarily a Familiar or Spirit, which appeareth to them sometimes in one Shape, sometimes in another; as in the Shape of a Man, Woman, Boy, Dog, Cat, Foal, Hare, Rat, Toad, &c. And to these their Spirits they give Names, and they meet together to christen them, (as they speak). *Ber. 107, 113.*

Their said Familiar hath some big or little Teat upon their Body, and in some secret Place, where he sucketh them. And besides their Sucking, the Devil leaveth other Marks upon their Body, sometimes like a blue Spot or red Spot, like a Flea-biting, sometimes the Flesh sunk in and hollow, (all which for a Time may be covered, yea taken away, but will come again to their old Form). And these the Devil's Marks be insensible, and being pricked will not bleed, and be often in their secretest Parts, and therefore require diligent and careful Search. *Ber. 112. 219.*

These first Two are main Points to discover and convict those Witches; for they prove fully that those Witches have a Familiar, and made a League with the Devil. *Ber. 60.*

So likewise if the suspected be proved to have been heard to call upon their Spirits, or to talk to them or of them, or have offered them to others.

So if they have been seen with their Spirit, or seen to feed some Thing secretly; these are Proofs they have a Familiar, &c.

They have often Pictures of Clay or Wax (like a Man, &c. made of such as they would bewitch) found in their House, or which they roast or bury in the Earth, that as the Picture consumes, so may the Parties bewitched consume.

Other Presumptions against these Witches; as, if they be given to usual Cursing and bitter Imprecations, and withal use Threatnings to be revenged, and their Imprecations or some other Mischief presently followeth. *Ber. 61. 205.*

Their implicate Confession: As, when any Man shall accuse them for hurting them or their Cattle, if they shall answer, *You should have let me alone then; or, I have not hurt you as yet.* These and the like Speeches are in Manner of a Confession of their Power of hurting. *Ber. 206.*

Their diligent Enquiry after the sick Party, or coming to visit him or her unsent for; but especially being forbidden the House.

Their Apparition to the sick Party in his Fits.

The sick Party in his Fits naming the Parties suspected, and where they be or have been, or what they do, if truly.

The common Report of their Neighbours, especially if the Party suspected be of Kin, or Servant to, or Familiar with a convicted Witch.

The Testimony of other Witches, confessing their own Witchcrafts, and witnessing against the suspected, that they have Spirits or Marks; that they have been at their Meetings; that they have told them what Harm they have done, &c. *Ber. 212, 223.*

If the dead Body bleed upon the Witches touching it.

The Testimony of the Person hurt, upon his Death.

The Examination and Confession of the Children (able and fit to answer) or Servants of the Witch, especially concerning the first six Observations: *sc.* If the Party suspected have a Familiar, or any Tear, or Pictures; her Threatnings and Cursings of the sick Party; her Enquiry after the sick Party; her Boasting or Rejoicing at the sick Party's Trouble: Also whether they have seen her call upon, speak to, or feed any Spirit, or such like; or have heard her foretell of this Mishap, or speak of her Power to hurt, or of her Transportation to this or that Place, &c.

Their own voluntary Confession, (which exceeds all other Evidence) *sc.* of the Hurt they have done, or of the Giving of their Souls to the Devil, and of the Spirits which they have, how many, how they call them, and how they came by them.

Besides, upon the Apprehension of any suspected, to search also their Houses diligently for Pictures of Clay or Wax, &c. Hair cut, Bones, Powders, Books of Witchcraft, Charms, and for Pots or Places where their Spirits may be kept, the Smell of which Place will stink detestably.

Now to shew you farther, some Signs to know, whether the sick Party be bewitched.

When a healthful Body shall be suddenly taken, &c. without probable Reason, or natural Cause appearing, &c. *Ber. 169.*

When Two or more are taken in the like strange Fits in many Things.

When the afflicted Party in his Fits doth tell truly many Things, what the Witch, or other Parties absent, are doing or saying, and the like.

When the Parties shall do many Things strangely, or speak many Things to Purpose, and yet out of their Fits know not any Thing thereof.

When there is a Strength supernatural, as that a strong Man or Two shall not be able to keep down a Child, or weak Person, upon a Bed.

When the Party doth vomit up crooked Pins, Needles, Nails, Coals, Lead, Straw, Hair, or the like.

When the Party shall see visibly some Apparition, and shortly after some Mischief shall befall him. *Ber. 173.*

But withal observe, with Mr. *Bernard, cap. 2.* that divers strange Diseases may happen only from natural Causes, where he sheweth eight such several Diseases; therefore, unless the Compact with the Devil be proved or evinced by evident Marks or Tokens as above-said, it is not to be supposed that the Devil is the Agent.

Indict-
ments.

And note, for the better Riddance of these Witches, being duly proved to be such, there must good Care be had as well in their Examinations taken by the Justices; as also in their Drawing of their Indictments, that the same be both of them set down directly in the material Points, &c. As,

That the Witch (or Party suspected) hath used Invocation of some Spirit.

Or, That they have consulted or covenanted with their Spirit.

Or, That they employed their Spirit, &c.

Or, That they have fed or rewarded their Spirit.

Or, That they have killed or lamed, &c. Some Person, &c.

And not to indict them generally for being Witches, &c.

The Difference between Conjuraton, Witchcraft and Inchantment, &c. is this, *scil.* Conjurers and Witches have personal Conference with the Devil, or evil Spirit, to effect their Purposes. See 1 Sam. 28. 7. &c. The Conjurers believe by certain terrible Words that they can raise the Devil, and make him to tremble; and by impairing themselves in a Circle, (which, as one saith, cannot keep out a Mouse) they believe that they are therein inscised, and safe from the Devil, whom they are about to raise; and having raised the Devil, they seem by Prayers and Invocation of God's powerful Names, to compel the Devil to say or do what the Conjuror commands him.

The Witch dealeth rather by a friendly and voluntary Conference or Agreement between him (or her) and the Devil or Familiar, to have his or her Turn served; and in Lieu thereof, the Witch giveth (or offereth) his or her Soul, Blood or other Gift unto the Devil.

Also the Conjuror compacts for Curiosity to know Secrets or work Miracles; and the Witch of meer Malice, to do Mischief, and to be revenged.

The Inchanter, Charmer, or Sorcerer, these have no personal Conference with the Devil, but (without any Apparition) work and perform Things (seemingly at the least) by certain superstitious and ceremonial Forms of Words (called Charms) by them pronounced; or by Medicines, Herbs, or other Things applied, above the Course of Nature, and by the Devil's Help, and Covenants made with him.

Of this last Sort likewise are Soothsayers or Wizards, which divine and foretell Things to come by the flying, singing or feeding of Birds, and unto such Questions as be demanded of them, they do answer by the Devil, (or by his Help) *scil.* they do either answer by Voice, or else do set before their Eyes in Glasses, Crystal Stones, or Rings, the Pictures or Images of the Person or Things sought for.

Cloaths. 15. *Cloaths.* If Burning, Cutting, Defacing or Spoiling Cloaths or Garments in the Streets, Felony, and to be transported for seven Years. 6 Geo. cap. 23.

Coach-house. 16. *Coach-house.* Stealing Goods out of it to the Value of 5 s. tho' not broke open, or assisting any Person to do it, Felony. 10 & 11 Willi.

Custom Officers. 17. *Custom-house Officer.* Hindered in the Execution of his Office, by Persons tumultuously assembled to the Number of eight or more, and those who aid and assist them, shall be transported for seven Years, and if they return within that Time, 'tis Felony without Benefit of Clergy. 6 Geo. cap. 21. 8 Geo. cap. 18.

Debentures. 18. *Debentures.* Altering or Counterfeiting them, or knowingly or fraudulently making them out, other than for the Sums certified by the Commissioners, Felony, without Benefit of Clergy. 5 Geo. 14. 6 Geo. 17. 9 Geo. 5.

19. Ex-

8 W. 6. 19. *Exchequer-Bills*: Counterfeiting them or any Endorsements, ^{Exchequer} Bills. or Tendering such Bills and Endorsements, or Demanding them to be changed for ready Money, knowing the Bill or Endorsement to be forged, is Felony, without Benefit of Clergy.

P. Fel. 33. 20. *Imbeziling the King's* Ordnance, Armour, Shot, Powder, or other ^{Imbeziling} Habiliments for War, or Victuals provided for Soldiers, &c. if it be by any Person having the Charge or Custody thereof, and to the Value of twenty Shillings, though at several Times, it is Felony. 31 *Eliz.* 4.

8 H. 6. 12. *Imbeziling any Record*, or Parcel thereof, Writ, Return, Panel, P. Fel. 18. Process, or Warrant of Attorney in the *Chancery*, *Exchequer*, *King's Bench*, *Common Pleas*, or *Treasury*, (by Reason whereof any Judgment shall be reversed) it is Felony in the Parties, and in their Counselors, Procurers or Abettors.

Vide Co. 11. 33. b. Clergy is taken away from such as offend against 31 *Eliz.* 4. As also, if any shall steal or imbezil any of the King's Sails, Cordage, or Naval Stores, to the Value of twenty Shillings, and be found guilty by Verdict or Confession; or will not answer directly, or stand mute, or be outlawed; he shall suffer Death, without Benefit of Clergy.

The Judge may reprieve the Prisoner, and order him to be transported; which if he shall refuse to be, or shall return in seven Years, he shall be executed. 22. *Car.* 2.

1 R. 3. 7. So the *Razing of such Record*, is Felony (within the said Statute of 8 H. 6.) Yet if a Judge do imbezil or raze a Record, this is but Misprision in the Judge. 2 R. 3. *Br. Cor.* 174. & *Treason* 31.

Co. 11. 34. See 1 R. 2. c. 4. But the Justices of Peace have not to do with these two last Sorts of Felonies, (*sc.* with imbeziling or razing of Records) for that these Felonies are committed to other Judges to deal with, by the same Statute of 8 H. 6. *P. Records* 4. See before Tit. *Felony*.

5 *Eliz.* 14. 21. *Egyptian*, *sc.* if any Person of the Age of fourteen Years or above, ^{Egyptian} shall call himself an *Egyptian*, or shall be in the Company of such, or shall disguise himself in Apparel, Speech, or otherwise, like such, and shall be or continue in *England* one Month, at one or several Times; it is Felony without Benefit of Clergy. 1 & 2 *Ph. & M.* 4. See *Egyptians antea*.

Note, That these Manner of Persons are besides all of them for the most Part Thieves, Cut-purses, Couzeners, or the like; and therefore the Justice of Peace shall do well to be careful, not only in the examining of them, but also to cause them to be well searched for counterfeit Passes, stolen Goods, and the like.

22. Every Person which shall acknowledge any *Fine*, *Recovery*, *Deed* ^{Presenting} *inrolled*, Statute, Recognizance, Bail or Judgment, in the Name of ^{See Bail} any other Person not privy or consenting to the same, being thereof lawfully convicted, shall be adjudged a Felon, without Benefit of Clergy, &c. 21 *Jac. cap.* 26. ^{antea.}

23 *Forestalling or Buying* any Merchandize before they come to the Staple, &c. was made Felony by 27 *Ed.* 3. *cap.* 11.

5 *Eliz.* 14. 24. *Forging of Evidences*, *sc.* of any Deed, Charter, Obligation, ^{Forging} Bill, Release, or other Writing sealed, or of any Court-Roll, or Will, or of any Acquittance; or to cause or assent to be made any such forged Writing; or Publishing any such Writing, knowing the same to be false: The second Offence is Felony without Benefit of Clergy. But it seemeth also, that the Justices of the Peace have not to

to deal with this, for that they cannot well take Notice of the former Conviction. See *Co. 9. 118. b. & hic antea*. Tit *Felony*.

Gaolers. 25. *Gaolers* (by Durefs of Imprisonment and Pain) inforcing their Prisoner to become an Approver, (that is, an Accuser of others as Coadjutors with him in Felony;) this is Felony in such Gaoler, although the Appellee, or Party so accused be acquit, or shall happen to die before he be arrested upon the Appeal, &c. *Stamf. 36. 14 E. 3. 10.*

If a Gaoler shall only procure his Prisoner to appeal, or accuse another of Felony, this is Felony, by *Scrope. An. 18 Ed. 3. Abr. d'Ass. 75. & Fitz. Coron. 272.* And yet the Statute of 14 Ed. 3. seemeth to extend only where the Gaoler shall do this by great Durefs or Pain.

Also by *Brit. f. 18.* if the Gaoler shall keep his Prisoner more strait than he ought of Right to do, by Reason whereof the Prisoner dieth; this is Felony by the Common Law in the Gaoler. And herein the Book called *Speculum Justiciar.* agreeth with *Britton.* And yet by the Statute of *West. 1. cap. 12.* Notorious Felons, and such as be openly of evil Name, or which be rebellious, they shall have strong and hard Imprisonment.

Hawks. 26. *Hawks*: Whosoever findeth any Hawk that is lost, if he shall not immediately bring the same to the Sheriff of the same County to be proclaimed &c. but doth imbezil and carry away the Hawk, it is Felony. *34 E. 3. 22. 37 E. 3. 19. P. Fel. 20.*

So it is in him whosoever taketh up any Hawk, and concealeth the same from the Owner, or his Falkner; or that taketh away any Hawk from the Owner, or stealeth any Hawk and carrieth it away, not observing the aforesaid Ordinance. *P. Hawks 2. Vide.*

Hunting. 27. *Hunting of any Deer* or Conies in any Park, Forrest or Warren, unlawfully in the Night-time, or with Vizards or other Disguises, and (upon an Examination by a Justice of Peace, &c.) to conceal the Offence, or any Offender therein, is Felony in such Concealer: But if such Offender (upon his Examination) shall confess all the Truth, then he is but finable. See hercof, *antea* Tit. *Hunting.* *1 H. 7. 7. P. Felon. 24. Lam. 271. Dyer 59.*

If any Person to be arrested for such Offence shall disobey the Arrest, or if any Person shall make Rescous, so that the Warrant (of the Justice of Peace) &c. for arresting them be not executed, it is Felony.

Quere, If such Hunting and Concealment, or Resistance, be Felony where the Offenders killed no Deer, &c. it seemeth not; for all the Precedents do run, *Occiderunt & asportaverunt*, &c. See *Lambert, Crompt. & Westm.*

Also *Quere*, If all such Hunting disguised, or any other unlawful Hunting in the Night-time, be not Felony; although the Offender be never examined thereof, nor conceal the same, as abovesaid. See the Statute 1 *H. 7. cap. 7. in fine*, where it seemeth that all unlawful Hunting in the Night (generally) is Felony. See in this Chapter, *antea*, *Blacks.*

If any Person shall take a tame Beast, or other Thing in a Park, by Manner of Robbery, it is Felony; and the Statute seemeth to be but an Affirmance of the Common Law in this Point. *3 Ed. 1. 20. P. Fel. 24.*

Imprisonment. 28. *Imprisoning*, or Taking against their Wills (without lawful Authority) any Subject in *Cumberland, Northumberland, Westmorland*, and the Bishoprick of *Duresm*, and carrying them away to make a Prey of them. *43 El. 13.*

Or, to be privy, consenting, procuring, aiding or assisting thereto :
Or, to receive, carry, or give any Consideration (called *Blackmail*)
for Protection therein :

Or, to burn, any Barn or Stack of Corn there; or to be aiding, pro-
curing or consenting thereto. Maiming
Cattle. See
Pl. 53.

Every of these Offences is Felony without Benefit of Clergy. 43

Eliz. cap. 13.

5 & 6 W. 7. 29. *Lottery-Tickets*: Forging or Counterfeiting them, or standing *Lottery*
8 Ann. 4. Orders made and exchanged for them, or Receipts to be given *Tickets*
5 Geo. 3. 9. out in Pursuance of the Lottery-Acts; or Altering the Number *and Orders.*
7 Geo. 20. or principal Sum of any Order, or Counterfeiting the Hand of any
Person to such Order, is Felony, without Benefit of Clergy.

1 Jac. 11. 30. *Marriage*: *sc.* If any Person being married, shall marry a second *Bigamy.*
P. Fel. 4. Husband or Wife, the first Husband being alive, &c. it is Felony; ex-
cept where the Husband or Wife have been absent seven Years, and
the one not knowing the other to be living within that Time; except
also Persons divorced, &c. by Sentence in the Ecclesiastical Court;
and except Persons marrying within the Age of Consent.

31. *Piracy*: Concerning this Offence, see the Statute of 28 H. 8. c. *Piracy.*

15. & *hic antea*, Tit. *Petty Treason.*

1 Jac. 31. 32. *Plague*, *sc.* If any Person being infected with the Plague, and be- *Plague.*
P. Fel. 3. ing commanded by an Officer to keep his House, shall notwithstanding
go abroad, and converse in Company, having an infectious Sore upon
him; it is Felony.

P. Fel. 37. 33. *Poisoning*, *sc.* Wilful killing of any Person by Poison, is wilful *Poisoning.*
P. Mur. 5. Murder in the Offenders, their Aiders, Abettors, Procurers and Coun-
sellors. 1 Ed. 6. 12. Co. 11. 31. But the Party poisoned must die
thereof within a Year and a Day after the Poison received. See *antea*,
in the Title *Murder*.

P. Jesu- 34. *Popish Priests*: To receive, relieve, aid or maintain any such, &c. *Popish*
ites 2. is Felony. Here *antea*, Tit. *High Treason.* *Priests*

P. Fel. 5. Popish Recusants, and such other Recusants and Sectaries which (by *and Re-*
the Statutes of 35 *Eliz.* 1 & 2.) are to abjure, if they shall refuse *cusants.*
to abjure, or after Abjuration shall not depart the Realm, according
as they shall be appointed, or after such Departure, shall return again
without the King's special Licence in that Behalf first obtained; it is
Felony without Benefit of Clergy.

8 & 9 W. 35. Rescuer of a Prisoner taken in a pretended privileged Place, for- *Prisoner.*
27. feits to the Plaintiff 500*l.* and if not paid within a Month after Re-
9 Geo. 28. covery, then to be transported for 7 Years; and if he return within
that Time, 'tis Felony without Benefit of Clergy.

P. Fel. 25. 36. *Purveyors*, *sc.* If any Purveyor, Taker, or other Person, their De- *Purveyors.*
P. Purv. puties or Servants, shall make any Purveyance, Takings, (or Prizes)
30. for the King's Majesty's House, of any Thing above the Value of
Lam. 406. twelve Pence (2 & 3 *Ph. & Ma. c. 6.*) in any of the six Sorts fol-
Crom. 48. lowing. See Tit. *Purveyance*.

P. Purv. Without Warrant or Commission under the Great Seal, and do
14. carry the same away against the Will of the Owner, it is Felony. 28
23 H. 6. 1. 2. *Ed. 1. c. 2. 4 E. 3. c. 4. 36 E. 3. c. 2.* (Which Warrant also they shall
shew to the Parties, before they do take any Thing from them.)

And note, that no such Commission shall continue good, or be in
Force above six Months, and they must be written in the *English*
Tongue; so that every Man may understand them. See the Statutes
36 E. 3. c. 2. 23 H. 6. c. 1. & 2 & 3 *Ph. & Ma. c. 6.*

Or

Or having a Commission, shall buy or take (any Thing) in other Manner than is contained in their Warrant or Commission. *P. Purv.* 36 Ed. 3. 2. 23 H. 6. 12. 19. Fel. 25. Raft. 350. 36 Ed. 3. cap. 2.

Or shall take any Carriage in other Manner than is comprised in their Commission. 36 Ed. 3. 2. P. 19. 23 H. 6. 1, 2. P. Fel. 15. P. Purv. 19.

Or having a Commission, shall take and carry away any Thing (above the Value of twelve Pence) and to the Value of forty Shillings or under, against the Owner's Will, or not paying for the same presently according as they can agree with the Seller; or if the Buyer and Seller cannot agree, then to take any Thing without being prized by the Constable and four Towns-men sworn, and by Indentures sealed by the Purveyor, &c. of the Things so taken, &c. See the Statutes 5 E. 3. 2. 13 E. 3. 1. 25 E. 3. 1. 36 E. 3. 2. 2 H. 4. 14. & 20 H. 6. c. 8. 26 Ed. 3. c. 2. Raft. 351. Crom. 48.

And yet, if it be but of the Value of forty Shillings or under, some do hold, That in this last Case the Purveyor shall only lose to the Party grieved the treble Value of his Goods so taken, and his Costs and treble Damages; and that it shall be at the Election of the Owner of the Goods to recover his said Damages and Costs, &c. either against the Purveyor, or against the Neighbours, Appraisors, and Towns adjoining; which being required, shall not resist the Purveyor or Taker, doing contrary to the Statute. See the Statutes 2 H. 4. 14. 20 & 6. 8. & 23 H. 6. c. 1. H. 2. But *Quere*, for all those former Statutes do stand still in Force, and be confirmed by these later Statutes, and by the Statutes made 2 & 3 P. H. & Ma. c. 6.

Or shall take more Victuals or Carriages for the King's House than he shall deliver to the same House. 36 Ed. 3. cap. 4. Fitz. Just. of P. 114. P. Fel. 25. P. Purv. 18.

Or shall take any Sheep with their Wools, between *Easter* and *Midsummer* at small Prices, or more than be sufficient for the King's House, and carry them to his own House and shear them. Fitz. *Ibid.* P. Fel. 25. P. Purv. 9. 25 E. 3. 15.

In every of these Cases it seemeth to be Felony in such Purveyor, their Deputies and Servants. And yet a Purveyor or Taker, &c. may take Victual or any such Thing, according to his Commission, at reasonable Prizes, to the Use of the King, and according to the Statutes, although it be against the Will of the Owner. *Br. Purv.* 1. But then he must take it by the Apprisement of the Constable and four Neighbours, &c. *ut supra.*

And yet *quere*, whether the Apprisement shall be made by the Constables and four Neighbours, or by the Lords of the Towns, or their Bailiffs; and also, whether the said Indentures shall be made and sealed between the Purveyors and Owners, or between the Purveyors and Apprisers, &c. for therein the said Statutes do somewhat differ.

But if a Purveyor shall take any Provision for the King's House by Force of his Commission, and shall after sell the same. Now his first Taking is become notorious, and he punishable as a Trespasser, if not as a Felon, *ab initio.* Co. 8. 146.

If the King's Hunters or Falkners, shall take any Thing against the Owner's Will, without paying for the same presently, it seemeth to be Felony. 36 E. 3. cap. 5.

If the King's Purveyors, or Takers of Carriage, shall take any Thing to spare another, they shall be imprisoned for the Space of two Years,

Years, forswear the Court, and pay treble Damages to the Party grieved. 36 Ed. 3. cap. 3.

34 E. 3. 2. If any Subjects Caterer, or other Officer, shall take any Viſuals,
36 E. 3. 6. Corn, Hay, Carriage, or other Thing againſt the Owner's Conſent, or
7 R. 2. 8. do not pay for it preſently, it is Felony. *P. Puro.* 1. See 23 H. 6. c. 14. here before *Tit. Purveyors.* And *quare*, if the Felony of ſuch Caterer be not altered herein by that Statute.

1 M. c. 12. 37. *Rebellious* and unlawful Aſſemblies of any Perſons, to the Num- *Rebel.*
P. Fel. 27. ber of twelve or above, &c. their Procurers or Relievers, it was Felony in them all.

1 Geo. 38. *Riot*, &c. where there are twelve Perſons or more unlawfully *Riot.*
cap. 5. aſſembled, and will not depart after Proclamation made for that Purpoſe, they ſhall be guilty of Felony without Benefit of Clergy.

39 El. 43. 39. *Rogues* being by the Juſtices of Peace, at their Quarter-Sessions, *Rogues.*
Fel. 34. adjudged incorrigible and dangerous, and therefore by them baniſhed this Realm; if they ſhall return again into any Part of this Realm without Licence, it is Felony.

1 Jac. 7. *Rogues* adjudged (as aforeſaid) incorrigible or dangerous, ſhall by
P. Vag. 4. the Judgment of the ſame Juſtices, in their open Sessions of the Peace, be branded in the left Shoulder, &c. And after ſuch Punishment, if any ſo puniſhed ſhall offend again in begging or wandering, contrary to the Statute of 36 El. 4. or 1 Jac. 7. it is Felony.

39 El. 15. 40. *Robbing* in the Day-Time any Dwelling-houſe, or any Out-houſe *Robbing.*
* Co. 11. belonging and uſed to and with any Dwelling-houſe, or a * Barn or
36. Stable, &c. if it be to the Value of five Shillings, or above, although
P. Clergy no Perſon therein; or to rob any Houſe by Day or by Night, any
13. Perſon being therein, and thereby put in Fear; or to rob any Perſon
Ed. 6. 9. in any Part of his Dwelling-place or Houſe, the Owner or Dweller,
Lam. 40. 5. his Wife, Children or Servants, being therein, or in any Place within
23 H. 8. c. 1. the Precinct of the ſame Houſe or Dwelling-place, (ſleeping or awaking;) or to rob any Booth or Tent in a Fair or Market, the Owner, his Wife, Children, or any Servant being there within the ſame (ſleeping or waking); Every of theſe Offences are now by the Statute made Felony, and as penal as Burglary, by the Loſs of the Benefit of Clergy. But to break a Houſe in the Day-time, although he hath a felonious Intent, yet if he carrieth away nothing; this is no Felony: For there muſt be actual Felony done, beſides the Breaking of the * 23. H. 8. Houſe in the Day. And by the Report of Maſter *Daliſon*, theſe
c. 1. * Statutes ſhall be ſtrictly conſtrued (in Favour of Life) and according
5 E. 6. c. 9. to the bare Letter; ſo that if the Robbery be done by Day, and there be in the Houſe but one Servant only, or be in the Houſe, Booth or Tent, but a Stranger or Sojourner only, the Fact ſhall not be adjudged an Offence againſt theſe Statutes. *Crompt.* 118. Co. 11. 36. ' But
* 39 El. c. 6. now by the * Statute he ſhall not have his Clergy.

15. 41. *Servants* imbeziling their Maſter's Goods. See hereof, *antea Servants.*
3 Jac. 4. P. Recuf. Tit. *Theft.*

48. 42. *Ship*, &c. The Owner, Captain, Maſter, Mariner, or other Officer *Ship.*
4 Geo. 12. belonging to any Ship, who ſhall wilfully burn or deſtroy the Ship, or direct or procure the ſame to be done, to the Prejudice of any Underwriter of the Policy of Assurance, or of any Merchant who ſhall load Goods therein, ſhall ſuffer Death.

3 & 4 W. 43. *Shop*: Breaking it open in the Day-time, and taking to the Value *Shop.*
11 W. of 5 s. and tho' not broke, if he take to the Value; this is Felony.

X x x

44. *Ship*,

Ship.

44. *Ship*: Making Holes in the Bottom, Sides, or any Part of it, ^{12 Ann^m} stealing the Pump, or doing any Thing to the Loss of it, Felony ^{18.} without Benefit of Clergy.

Soldiers.

45. *Soldiers, scil.* If any Subject shall pass out of this Realm, to serve any foreign Prince, &c. not having before their Passing, taken the Oath of Allegiance, &c. before the Officer thereunto appointed, it is Felony.

If any Gentlemen, or Person of higher Degree, or any Captain, or other Officer in Camp, shall pass out of this Realm to serve any Foreign Prince, &c. or shall voluntarily serve any Foreign Prince, &c. before they shall become bound to the King with two Sureties (before the Officer thereto appointed) with Condition to this Effect, *viz.* not to be reconciled to the Pope, &c. nor to make or consent unto any Conspiracy against the King, &c. but to disclose all Conspiracies upon Knowledge thereof, &c. it is Felony. *Ibidem.*

Soldiers entred of Record, and having taken Prest-Money, or Parcel of their Wages of their Captain, if they shall not pass the Sea, or go with their Captain, or being in the King's Service shall depart without Licence, it was made Felony by the Statute of 18. *H. 6. c. 19.* But see *Co. 6. 27.* that this Statute of 18 *H. 6. 19.* is now of little Force, for that the ancient Manner of retaining of Soldiers, to which this Statute hath Reference, is now altogether changed, &c. And yet if a Soldier who is retained, or hath taken any Prest-money, shall at this Day depart out of the King's Service without Licence, it is Felony by the Statutes 7 *H. 7. 1.* & 3 *H. 8. 5.* Which two last mentioned Statutes are yet in Force, and are Acts perpetual. *Co. ib.* And by the said Statute of 3 *H. 8. c. 5.* such Licence of Departure must be ^{18H.6.10. P. Fel.23. P. cap.3. Co. 6. 27. Rast. 50.} made by the King's Lieutenant.

Soldiers, if they shall depart without Licence, after they have served in the King's Wars, it is Felony without Benefit of Clergy; none but the Lieutenant shall give a Soldier Licence to depart. 2 *Ed. 6. c. 2. Co. 6. 27.* See 4 & 5 *Ph. & Ma. c. 3.*

If any Mariner or Gunner, having taken Prest-wages to serve the King on the Sea, shall not come unto, or shall depart from his Captain, without Licence, it is Felony. Yet *quare*, and see the Statute of 4 *El. c. 5.* at large, for that it doth relate to the aforesaid Statute of 18 *H. 39 El. 17.* 6. 19. which (as appeareth before) is now of little Force.

Soldiers.

Soldiers and Mariners, and all idle Persons wandering as Soldiers and Mariners, which will not settle themselves to some lawful Course of Life, but shall wander up and down idly, or beg up and down, it is Felony in them without Benefit of Clergy.

So it is if any idle or wandring Soldier or Mariner, coming from beyond the Seas, or from the Seas, shall not have a lawful Testimonial under the Hand of some one Justice of Peace near the Place of his Landing, setting down therein the Place and Time of his Landing, and the Place unto which he is to pass, and a convenient Time for his Passage. 39 *Eliz. 17.*

Or having such Testimonial, if they shall wilfully exceed the Time therein limited above fourteen Days. *Ibid.*

Or if they shall forge or counterfeit any such Testimonial; or shall have any such forged Testimonial, knowing the same to be forged, &c. *Ibid.*

Or being retained into Service after his Arraignment, &c. if he shall depart within the Year without Licence of his Master. In all these former

mer Cases, it is Felony in such Soldier, &c. without any Benefit of Clergy.

- 39 El. 17. Justices of Peace may hear and determine these Offences by Soldiers, Mariners, and idle Persons wandering, and shall execute the Offenders convicted before them, except some Subsidy-man, or honest Freeholder, to be allowed by the Justices, will be content before them, to take him into Service for a Year, and be bound in a Recognizance of 10*l.* to keep him a Year, and to bring him to the next Sessions after the Year: And if he depart from his Service, before the Year ended, he shall be indicted, tried and judged as a Felon, and not to have his Clergy.

And yet see the Statute of 43 El. 3. that Soldiers and Mariners begging, or counterfeiting a Certificate from their Captain, shall be adjudged and punished but as Rogues. See *hic antea*, Tit. Rogues.

- 5 & 6 W. 46. *Stamps*: Forging them is Felony without Benefit of Clergy. *Stamps*

21.
9 & 10 W. 25. 8 Annæ 9.

- 6 Geo. 11. 47. *South-Sea*: Forging any Warrant for a Dividend, or any Endorsement, or Writing, &c. or tendering the same, &c. Felony without Benefit of Clergy.

- 8 Geo. 22. 48. *Stock*, or Share of Company, &c. Forging, or Procuring to be forged, or wilfully acting and assisting in forging a Letter of Attorney, or other Instrument to transfer or assign any Share in the Capital Stock of any Corporate Body established by Act of Parliament, or the Name of any Proprietor; or to receive any Annuity or Dividend, or falsely to personate any Proprietor, Felony without Benefit of Clergy. *Stock, or Share of Companies*

- 6 Geo. 23. 49. The Court, before Felons are convicted, may appoint two Justices of the County, to contract with any Person for transporting them.

- 8 El. 3. 50. Transporting or sending any live Sheep out of the King's Dominions, the second Offence is Felony. *Sheep. See Pl.*

- 27 E. 3. c. It was made Felony for any Man to carry or to transport any Wools.

3. 7. 12. Wools, Leather, Woolfells or Lead, out of *England* or *Ireland*; but see other Statutes since made concerning the same. 38 Ed. 3. cap. 6, & 18. 7. & 14 Rich. 2. cap. 1 & 5.

- 7 Annæ 4. Soldiers, or Officers out of *Great Britain*, and raising any Mutiny in the Army, or refusing to obey or resisting a superiour Officer, or striking, drawing, or offering to draw or lift up any Weapon against him, Felony. *Soldiers.*

Witches. See Conjurat.

- 13 E. 1. 34. 51. *Women*: *sc.* To ravish a Woman where she doth neither consent before nor after; or to ravish any Woman with Force, though she do consent after, it is Felony; and the Offender shall have no Benefit of Clergy. 18 El. c. 6. *Br. Cor.* 204. *Vide Dyer* 202. 'That Man shall die, by the Law of God. *Deut.* 22. 25. *Women. Rape.*

'If a Man take away a Maid by Force and ravish her, and after she giveth her Consent, and marrieth him, yet it is a Rape.

Ravishment is here taken in one and the same Signification with Rape. Rape, which is a violent Deflowring of a Woman, or carnal Knowledge had of the Body of a Woman against her Will. 9 Ed. 4. 36. *Rape. S. antea. c.*

Fl. l. 2. & Co. L. 123.

- Stamf. 22. A Woman that is ravished, ought presently to levy open Hue and Cry, or to complain thereof presently to some credible Persons. *Glanville* 115. See the Statute *De Officio Coronatoris.* 4 E. 1.

Fleta saith, That the Complaint must be made within forty Days, or else the Woman may not be heard. *Lib. 3. c. 5.* But in *Scotland*, and some other Countries, this ought to be complained of the same Day or Night that the Crime is committed. The Reason is, *Quia lapsu diei hoc crimen praescribitur.* *Minsb. and Dr. Corwel.*

And yet in an Indictment of Rape there is no Time of Prosecution necessary, for *Nullum tempus occurrit Regi.* But in Case of an Appeal of Rape, if the Woman doth not prosecute it in convenient Time, she shall be barred.

If a Woman at the Time of the supposed Rape do conceive with Child by the Ravisher, this is no Rape; for a Woman cannot conceive except she doth consent. *Finch, lib. 2.* Brit. 55.
Stamf. 24.

And yet if a Man ravish a Woman, who consenteth for Fear of Death or Duress; this is Ravishment against her Will, for that Consent ought to be voluntary and free. E. 4. 6.
Br. Parl. 55.

All such as are present, abetting, aiding or procuring another to commit a Rape, are principal Felons.

If a Man and a Woman be present, with Purpose that the Man shall by Violence carnally know the Body of another Woman there also present, against her Will, and the Man doth the Fact in the Presence of the other Woman, she so present (as well as the Man) shall be a principal Ravisher; the Man the Agent, and the other Coadjutant: And so one Woman may be a Principal to the Ravishment of another. *Dod. 138.*

It is a good Plea in an Appeal of Rape, to say, That before the Ravishment supposed, she was his Concubine, as *Mr. Bracton* saith. Stamf. 24.

And yet to ravish an Harlot against her Will, is Felony; for *licet Meretrix fuerit ante, certe tunc temporis non fuit, cum nequitia ejus reclamando consentire noluit.* *Bract. l. 2.* Crompt. 47.

Also to take any Maid, Widow or Wife (having Lands or Goods, or being Heir apparent to her Ancestor) against her Will unlawfully, is Felony; and to receive any such Woman so taken, knowing thereof, or to procure and abet the same, is Felony; and they shall all be reputed as Principals: And as well the Principals as Accessaries before the Offence shall lose all the Benefit of Clergy. *39 El. c. 9.* H. 7. 2.
P. Fel. 16.

But this Act doth not extend to any Person taking any Woman, only claiming her as his Ward.

The Taking away of a Maid under sixteen Years of Age, without the Consent of her Parents or Governors, or Contracting Marriage with her, or Deflowring, is no Felony; but yet shall be punished with long Imprisonment without Bail, or with grievous Fine. 4 & 5 Ph.
& Ma.
P. Women 7, 8.
See Co. 3.
37, &c.

But unlawfully and carnally to know and abuse any Woman Child under the Age of ten Years, is Felony; altho' such Child consents before. *Crompt. 47.* and the Offender shall have no Benefit of Clergy. 18 Eliz. 7.
P. Fel. 14.

Also to take away a Man's Wife with the Goods of her Husband, whether it be against her Will, or against her Husband's Will, seemeth to be Felony by the Statute of *West. 2. cap. 34.* the Words thereof are, *De mulieribus abductis cum bonis virorum suorum, habeat Rex sectam de bonis sic asportatis.* 13 Aff. 6.
Br. Cor. 77.
Stamf. 94.
Crompt. 35.

But if the Wife take her Husband's Goods, and so goeth away voluntarily with another Man, and with those Goods, or delivereth them to another Man; these two last Cases seem not to be Felony. 2 Cor. 4.
35.
Stamf. 27.

Bejards. If a Woman be delivered of any Issue of her Body, which, if it were born alive, should by the Laws of this Realm be a Bastard, and that

that she endeavour (privately, either by Drowning, or secret Burying thereof, or any other Way) so to conceal the Death, that it may not come to light, whether it were born alive or not; but be concealed; in every such Case, the said Mother so offending, shall suffer Death as in Case of Murder, except she can prove that the Child was born dead. 21 Jac. cap. 27.

Now the Mother's Proof that her Child was born dead, must be by Witnesses: And therefore, if the Mother will call for no Help at the Time of her Labour, but secretly be delivered, and then the Child be found dead, it is a strong Presumption against her, that she murdered it; and the rather, for that it is a received Opinion, That if the Child were dead in her Body, she could not then be delivered without the Help of some others. Which Opinion, some grave Matrons have denied, and that of their own Knowledge.

52. If any in the Night-time, maliciously or willingly burn, or ^{Burning.} cause to be burned or destroyed, any Ricks or Stacks of Corn, Hay or Grain, Barns, other Out-houses or Buildings, or Kilns, or kill or destroy any Horses or Sheep; it is Felony. 22 & 23 Car. 2.

If any Person that shall be convict or attaint of that Felony to avoid Judgment of Death, shall elect to be transported to any Plantation, Judgment shall be entred; That he shall be transported, and there remain seven Years; and the Sheriff shall convey him, and imbarck him for Transportation. And if he return within seven Years, he shall die as a Felon. 22 & 23 Car. 2.

53. If any Person shall in the Night-time, maliciously maim, ^{Cattle.} wound or hurt any Horses, Sheep or Cattle, whereby the same are not utterly killed or destroyed, or shall destroy any Plantations of young Trees, or throw down any Inclosures, he shall forfeit treble Damages to the Party grieved, to be recovered by an Action of Trespass or Case at Common Law. 22 & 23 Car. 2.

Upon Complaint, any three Justices of the Peace (*Quorum unus*) may inquire by the Oath of twelve Men, and by Examination of Witnesses, or other Ways, as they shall think fit concerning Offenders, and may issue out Warrants for summoning a Jury, and for Apprehending the Parties; and to take their Examination, and to call all such Persons as are likely to make Discovery, and to examine them upon Oath; so as no Person so examined, shall be proceeded against, or convicted for such Offence, touching which he is examined, and shall make a true Discovery. And if any Person, thought likely to make such Discovery, shall refuse to appear, or to be examined, he shall be sent to the Gaol without Bail, until he shall submit to be examined. 22 & 23 Car. 2.

None shall be punished by this Act, who shall be punished for the same Offence by any other Act; nor shall be questioned, unless he be proceeded against within six Months after the Offence committed. *Ibidem.*

54. If any export, transport, carry or convey out of *England* or ^{Exporta-} *Ireland*, into any Parts out of those Kingdoms, or into *Scotland*, any ^{tion of} Sheep or Wool, or the Breed or Growth of them, or any Woolfels, Mortlings, Shorelings, Yarn made of Wool, Wool-flocks, Fullers-Earth or Fulling-Clay; or shall pack or load, or cause, &c. the same on any Horse, Cart or Carriage; or load or lay on board, or cause, &c. the same in any Vessel in *England* or *Ireland*, with an Intent

‘ Intent to convey or cause, &c. out of *England* or *Ireland*, into *Scotland*, or any foreign Parts; it is Felony. 14 *Car. 2. c. 18.*

‘ Every Owner of Ship, Vessel, Horse, Cart or Carriage, upon which the same shall be laded to be exported; and every Master and Mariner of such Ship or Vessel, every Factor, Servant, or other Person, every Customer, Controller, Waiter, Searcher, Surveyor, and other Officer or Person knowing thereof, and wittingly consenting thereunto, shall be a Felon, and suffer as a Felon. *Ibid.*

‘ No Person shall be impeached for these Felonies, unless indicted within four Years after such Offence committed. 14 *Car. 2. c. 18.*

‘ The Owner of the Ship, Master or Mariner, knowing thereof, that shall within three Months after his Knowledge thereof, or Return into *England* or *Ireland*, give the first Information *bona fide* before the Barons of the *Exchequer* of *England* or *Ireland*, or the Head Officer of the Port where he arrives, upon Oath, of the Goods conveyed; and by whom, where, and in what Vessel; and be ready upon Notice by Process to justify the same, shall be excused of Felony, but liable to other Forfeitures. 14 *Car. 2. cap. 18.*

C H A P. CLXI. Vide CVIII.

Accessaries.

§. 1. ‘ ONE describeth an Accessary, *Accessarius, quasi accedens ad culpam, & particeps culpa*, as knowing it; another, *Accessarius etiam secundarius dicitur*.

In Treason. In *High Treason* there be no Accessaries, for the Advisers, Counselers, Perswaders and Assistants therein, as also the Receivers knowing thereof, be Principals, and as much as if they were Actors or Doers; yea, all that shall advise, counsel, perswade, command, procure or hire another to do any Treason or Felony, (they being indeed the very Cause of the Fact) may well seem as culpable, if not more than the principal Actor; for the Rule is, *Plus peccat author quam actor*. Examples also we have hereof, in the Book of God, *Gen. 3.* The Serpent, the Procurer of the first Sin, by God’s own Judgment, had a greater Punishment than the Woman or Man. Again, *2 Sam. 12. 9.* *David* is told (from God) that he had killed *Uriah*, whereas he only commanded *Joab* to kill him, &c. Yet in case of Felony our Law is otherwise.

Note, Whatever Offence doth make a Man Accessary in Felony, the same, or like Offence maketh him a Principal in *High Treason*.

But yet this is to be understood of Accessaries before the Treason; for Receiving, Aiding and Comforting a Traitor after the Offence (knowing the same) was holden to be but Misprision of Treason. 12 & 13 *Eliz. Dyer 296.* And yet by some other Authorities, the Receiving of Traitors after the Offence, knowing thereof, is holden to be Treason. See 3 *H. 7. 10. Br. Treason 19. Hussey* Chief Justice, and *Crompt. 42. b.* who alledged the Book called *The Exposition of the Terms of the Law, tit. Accessaries.*

§. 2. Sir *Edw. Coke L. 57.* telleth us, That in the highest and lowest Offences there be no Accessaries, but all are Principals: As in the highest Offence,

Offence, which is *Crimen lese Majestatis*, there be no Accessaries; and so in the lowest, as in Riots, Routs, Forcible Entries, and other Trespasses, *Vi & Armis*.

In Cases of *Premunire* there may be Principal and Accessary. 44 E. 3. & 8 H. 4. 6. b. *Hulls, Br. Premunire* 4. 6. *Tamen quare*, for these Offences seem more like a Trespass than a Felony, &c. And upon the Statute of 27 E. 3. the Offenders shall forfeit nothing, if they appear at the first Day; but if they appear not at the first Day, then (for their Contumacy) they shall be out of the King's Protection, and shall forfeit their Lands and Goods to the King, which are as a Pain given by the Statute; but it is no Attainder: Also, if the Principal appear not, or happen to be dead, yet the other shall answer; and therefore it seemeth that they be all Principals in Cases of *Premunire*. *Br. ibid.*

In Petty Treason there is a Principal, and there may be Accessaries, as there is in Felonies.

In Felony there be two Sorts of Accessaries.

The one is Accessary before the Felony committed.

The other is Accessary after the Offence done.

§. 3.
Two Sorts
in Felony.

But he that is present at the Time of the Felony committed (be it in Case of Murder, Robbery, Burglary or Larceny) is a Principal at this Day, if he were either a Procurer, or Mover or Aider, Comforter or Consenter thereto, although at that present he doth nothing. See before *Plo.* 100. a. 11 H. 4. *Br. Coron.* 188. & 228. & *Indictment* 5.

And yet concerning Murder, in every Appeal the Count is, that every Principal *Luy coup' & ferust mortalment*, &c. But these Words are but Form, and the Striking of him which killeth the Party, shall be adjudged the Striking of all those which command, procure, move, aid, or consent thereto, when they be present; and they which give the Stroke or Wound may be termed Principals in Fact, and the other being present, Principals in Law. See *Plo.* 97. b. & 100. a.

Stamf. 40. b. If one being present at the Killing or Robbing of a Man doth nothing, yet would have aided his Companion if there had need been, he shall be adjudged a Principal. *Fitz. Coron.* 309.

F. Cor. 325. Stamf. 37. 40. b. Cromp. 44. 4 H. 7. 31. But if one be present by Chance, and seeth when another is slain or *Misprison* robbed, or when any other Felony is committed, and doth not come in Company with the Felons, nor is of their Confederacy, altho' he doth not make Resistance, or disturb the Felon, or levy Hue and Cry, nor discovereth the same, but concealeth; yet it is no Felony in him, but *Misprison of Felony*, and fineable as a Trespass.

And he may be imprisoned by the Justice of Peace until he shall find Sureties to pay such Fine as shall be assessed upon him by the Justice, before whom the Cause shall be heard. See *Fitz. Coron.* 395.

Also in some Cases a Man may be a Principal, altho' he be not present at the Time of the Felony committed; as if *A.* knowing drink to be poisoned, perswades *B.* to drink it, and after *B.* (in the Absence of *A.*) doth drink it, and dieth thereof, *A.* is here a principal Murderer. *Co.* 4. 44. See other like Cases of Poisoning. *Antea tit. Murder. Et postea, sub hoc tit. Accessaries.*

And. part 1. p. 116. Two Thieves, viz. *A.* and *B.* set upon *C.* and *D.* to rob them, *C.* flieth one Way, and *A.* pursueth him, but robbeth him not. *D.* flieth another Way, and *B.* pursueth him, and robbeth him: Adjudged by the

the whole Court of *King's Bench*, that *A.* is Principal in the Robbery of *D.* and was hanged for it. *H. 26 El.*

Note, that the Accessary in Felony, whether before or after, tho' it be another Offence, and distinct from the principal Fact; yet it is also Felony, and they shall have the same Punishment which the Principal shall have.

Note also, when a Statute maketh an Offence to be Treason or Felony, which was not so before by the Common Law, and yet the Statute saith not that the Abettors, Aiders, Comforters or Consenters to the Doing thereof, shall be also Felons; yet it shall be Felony in them, for that they were the Causes of committing the Offence, which (it may be) otherwise had not been committed. See *Lamb. p. 279, 280. 19 H. 6. fol. 47. & 11 H. 4. fol. 13. Fitz. Coron. 228.*

And so it seemeth of Receivers, &c. after the Offence. *Lamb. 281.* for where a Statute maketh a Thing Felony, it is made as Felony to all Intents and Purposes.

§ 4.
Kinds.

The Book called the *Mirror of Justices* maketh divers Manner of Accessaries; *sc.*

Those who command. Those who counsel. Those who consent. Those who are Partakers in the Gain. Those who know thereof, and do not disturb or hinder the same. Receivers knowing thereof. And those who are present at the Fact. But these last (at this Day) are Principals as aforesaid.	}	And so Murder, and other Felonies, may be committed as well in Words and Heart, as by outward Act.
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And now our Books do divide them into two Sorts, *sc.* Accessaries before the Felony (or Fact), and Accessaries after the Fact.

§ 5.
Before the
Fact.

Accessaries before the Felony, are such as command, hire, procure, move, conspire, counsel, abet, *sc.* incourage or set on, or consent to commit any Petty Treason, Murder, Robbery, Rape, Burglary or Larceny, but are not present thereat; yet all such are thereby Felons, when the Felony is committed.

Præcipiendo,
Persuadendo,
Consu-
lendo,
Consentiendo.

But here some Differences are to be observed, when the Principal and chief Offender doth not accomplish the Fact altogether in the same Sort, as it was before-hand agreed between him and the Accessary; and therefore if *A.* command *B.* to lay hold upon *C.* and *B.* goeth and robbeth *C.* This is no Felony in *A.* (if he be absent when the Robbery is done) for his Command might have been performed without any Robbery.

But if the Command had been to beat *C.* and the Party commanded doth kill *C.* or beat him so that he died thereof, *A.* shall be accessory to his Felony and Murder; for it is a Hazard in Beating a Man, that he may die thereof. *F. Co. 314.*

A. commandeth *B.* to rob *C.* and in Attempting this *B.* killeth *C.* *Plow.* *A.* shall be accessory to this Murder; for in attempting to rob *C.* the Command of *A.* was pursued, and when in the Execution thereof another Thing falleth out, he which gave the Command shall be adjudged a Party thereto, for that his Command was the Cause thereof. *Plow. 475.*

Rule.

He that commandeth or counselleth any Evil or unlawful Act to be done, shall be adjudged Accessary to all that shall ensue upon the same evil Act, but not to any other distinct Thing. *Ibid.* As if

Pl. 475. *A.* commandeth *B.* to steal a Horse, and he stealeth an Ox, or to steal a White Horse, and he stealeth a Black; or to rob a Man by the Highway of his Money, and he robs in his House of his Plate; or to burn the House of *B.* and he burneth the House of *C.* These be other Acts and Felonies than *A.* commanded to be done, and therefore *A.* shall not be adjudged Accessary to them.

But if *B.* shall commit the same Felony which *A.* did command or counsel to be done, tho' he doth it at another Time, or in another Place, or in another Sort than *A.* did command or counsel, yet here *A.* shall be Accessary thereto; for *Mandata illicita recipiunt latam & extensam interpretationem. Vide Pa. 66, 67.*

Ibid. As if *A.* doth counsel *B.* to kill *C.* by Poison, and he killeth him with his Dagger, or by other Violence; or to kill *C.* by the Highway, and he killeth him in his House; or to kill him one Day, and he killeth him upon another Day. In these, and the like Cases, *A.* shall be Accessary to the Murder.

Lamb. 283. *A.* counselleth *B.* to poison *C.* and to that end, *A.* buyeth Poison, and delivereth it to *B.* who tempereth it in an Apple, and delivereth it to *C.* with Intent to poison him; and *C.* knowing nothing, giveth the Apple to *E.* who eateth it, and dieth thereof. Here *A.* is not Accessary to the Murder of *E.* yet it is Murder in *B.* Pl. 475, 476.

A. counselleth or commandeth *B.* to kill *C.* and after, and before he hath killed him, *A.* doth repent; and countermands it, charging *B.* not to kill *C.* and yet after *B.* doth kill *C.* Here *A.* shall not be adjudged Accessary to the Death of *C.* for the Law adjudgeth no Man Accessary to a Felony before the Fact, but such as continue in that Mind at the Time that the Felony is done and executed. Pl. 475.

Dyer 186. But if *A.* counselleth a Woman to murder the Child in her Body, Co. 7. 9. a. (when it shall be born) and after the Child is born, and then the Midwife or other Person, in the Presence of the Mother, and by her Command killeth the Child, although it be done in the Absence of *A.* yet he is Accessary by his Counselling it before the Birth, and not countermanding it. Dyer 186.

Lamb. 285. 14 H. 7. 31. A Man knoweth a Felony intended to be done, and doth conceal it, and suffereth it to be effected: This maketh him no Accessary to the Felony, except he consenteth thereto; but such Concealment seemeth to be only Misprision of Felony, and fineable. And yet the Rule is, *Qui non prohibet, quod prohibere potest, consentit. Ideo quare.* And *Bratton*, fol. 121. speaking of Murder, saith thus, *Ille, qui cum possit hominem a morte liberare, non liberabit, immunis esse non debet a pena.* §. 6. Misprision.

Moor's Rep. p. 461. Note, That in *Manslaughter* there can be no Accessary before the Fact, for *Manslaughter* is upon a sudden Falling out.

Moor's Rep. p. 666. See also in Forgery made Felony, by the Statute all are Principals. *Booth's Case.* Forgery.

Co. 4. 44. Note also, That none shall have Clergy who maliciously command, hire or counsel any Person to commit any Petty Treason or wilful Murder, or to do any Robbery. 4 & 5 Ph. & Ma. c. 4. See Dyer 183, 186. & Co. 11. 35. Clergy.

Also none who is Accessary before the Fact, to any felonious Burning of any Dwelling-house, or any Part thereof, or Barn with Corn, shall have any Benefit of Clergy. 1 E. 6. cap. 17. 4 & 5 Ph. & Ma. cap. 4. See Co. 11. *Poulter's Case.* Burning.

Horse-
stealing.

No Horse-stealer, nor Accessary thereto, either before or after such Felony done, shall have any Benefit of Clergy. 2 E. 6. cap. 33. & 31 El. 12.

§. 7.
After the
Fact.

Accessaries after the Offence are they, who knowing that another hath committed a Felony, do voluntarily receive, harbour, relieve, assist, comfort, or aid him, whether it be before the Attainder of the Felon, or after his Attainder. *Br. Indictment* 4.

As to comfort or relieve a Felon (before he is attainted) with Money, Meat, Drink, or Lodging, knowing of the Felony, maketh one Accessary. 26 Ass. pl. 47.

So to lend him a Horse to go his way withal, or otherwise to be a Means of his Escape. *Fitz. Coron.* 427.

But to relieve him being in Prison, maketh not a Man Accessary: *Br. Cor.* Also to aid him by his good Word, or sue for his Deliverance, or to send a Letter for his Inlargement. *Finch.*

A Felon under Bail, and who stands bound to appear for his Trial; to receive, harbour, or relieve such a one with Money or Victual, is no Accessary, because the Felony cannot be concealed, nor the Trial hindered by it. *Lam.* 286. *Crom.* 42.

A Felon getteth his Pardon; such as shall receive or relieve him after shall not be accounted accessary; but to receive or relieve him before his Pardon obtained, is Felony. See *Pl.* 476. Yet it seemeth upon this Pardon, such Accessary before shall be discharged.

A Felon is *attainted* by Verdict, Confession, or by Utlary; to receive, harbour, or relieve such a one, by any Person dwelling in the same County where the Felon is attainted, it maketh such Receiver or Aider, an Accessary to the Felony, although such Receiver, &c. did not know of the Felony; because by the Attainder of the Felon, he is so of Record; whereof every Person dwelling in the same County is to take Notice. Yet Master *Bracton* requireth a more direct Knowledge in the Parties to make them Accessaries: For tho' a Record (and specially the Pronouncing of an Utlary in the County Court) be so notorious, that every Man may easily know the same; yet it would be a great Extremity, that every Man should (upon the Peril of his own Life) take certain Knowledge thereof. Which Opinion of Mr. *Bracton*, Mr. *Lambert* also holdeth to be very reasonable. *F. Cor.* 377. *Stamf.* 96. *Dyer* 355.

But a Felon attainted by Verdict, Confession, or Utlary, in one County, if another doth receive or aid him in another County; this maketh such Receiver or Aider no Accessary to the Felony, unless he did also know of the Felony. *F. Cor.* 375. *Vi. Stamf.* 41.

Feme Co-
vert.

If a Feme Covert shall relieve, or receive and keep Company with her Husband, knowing him to be a Felon, she is no Accessary thereby: For a Woman Covert cannot be Accessary in Felony to her Husband, for she ought to relieve him, and not to discover his Counsel. But *Quere*, if this be not to be understood of *Accessary after the Fact*; for if the Wife shall procure, counsel or conspire with her Husband to commit any Felony, and he thereupon shall execute the same, though the Wife be not present thereat, yet she may seem to be Accessary to her Husband in such Case; for Mr. *Bracton* saith, *Uxor virum accusare non debet, nec detegere Furtum suum neque Feloniam; consentire tamen non debet Felonia viri sui, neque esse coadjutrix.* *Stamf.* 26. *F. Co.* 283. *Stamf.* 26. & 43. f.

Also if the Wife receiveth, &c. another Felon, she is an Accessary.

A Servant may be Accessary to a Felony, committed by his Master or Mistress, *sc.* By relieving or aiding them, or otherwise by being a Means of their Escape: For Mr. *Bracton* saith, *Concubina & famula domus non sunt in eodem casu quo uxor; ipsa enim accusare tenentur, aut recedere a servitio, alioquin videntur consentire.* *Stamf.* 27. a. Servant.

A Servant knowing his Master to be a Felon, continueth to do him Service; the Servant is thereby an Accessary. *Let. M. Cook.*

The Master knowing his Servant to be a Felon, still keepeth him in his Service; the Master is thereby an Accessary. *Ibid.*

See *Stamf.* 42. c. A Felon fled to the House of his natural Brother, and the Brother shut the Fore-door against the Pursuers, and conveyed the Felon out of his House at a back Door, whereby he gat to the Church: This Brother was adjudged an Accessary for it, for he was a Means of the Escape. Such a Matter.

Quere, If a Felon flieth and cometh to his Friend's House, and his Friend shutteth the Door against him, and yet maketh the Pursuers believe that he is in the House, whereas he escapeth, if this make not the Friend an Accessary.

9 H. 4. 1. A Man hath a Felon in his House, and (knowing of the Felony) suffereth him to go his Way, and so to escape; yet this is no Felony, for that he had not arrested him of the Felony before: Neither can such an Escape make him an Accessary, except he were any Means of the Escape. Br. Cor. 26. See Br. Esc. 43.

1 H. 7. 6. If one do rescue him that is arrested for the Felony, he is a Principal Felon, and not an Accessary. §. 8. Rescous.

Stamf. 43. Receiving or buying of stolen Goods, knowing they were stolen, maketh not a Man Accessary to the Felony, unless he receiveth also (or aideth) the Felon himself; yet Mr. *Crompton* maketh a *Quere* thereof, and alledgeth some Cases to the Contrary. See *Crompt. fol. 41, 42, 43.* But it was adjudged, *T. 44 El. B. R. Dawson's Case.* That it maketh no Accessary, *Telvert. pag. 4.* See at the End of this Chapter, and the Statute 1 *Anna cap. 9.* Buying stolen Goods.

But herein there seems a Difference between a Buyer, being a Stranger to the Felon, and who for valuable Consideration shall buy such Goods, and a Receiver or Buyer who is an Adherent or Companion to the Felon, or that by Covin shall receive or buy such Goods. See the Preamble to the Statute 2 & 3 *Ed. 6. cap. 24.*

Crompt. 43. A Man buyeth stolen Goods for five Shillings, which are worth twenty Shillings, this maketh the Buyer an Accessary, by the Opinions of Mr. *Crompt. fol. 43.* and of Sir *Nich. Hide* in his Charge at Lent Assizes at *Cambridge, 1629.* For it may well appear by the Price, that the Seller came not truly by them; and therefore it is safe to lay hold upon such Sellers as shall sell any Thing at any great Undervalue. Undervalue.

Br. Cor. 122. A Man pursueth and taketh a Felon that hath stolen his Goods, and then taketh his Goods again, and suffereth the Thief to escape; he is not Accessary thereby, for he may *in initio agere civiliter*, or *criminaliter*, at his Pleasure, as Mr. *Bracton* writteth, *Stamf. P. R. 131.* 28. *Quere tamen.* For Mr. *Stamf. fol. 40.* and Mr. *Finch lib. 2.* say, that if he take his Goods again from the Felon to favour him; this is Theft-boot, (the Punishment whereof, in ancient Time, was of Life and Member, though at this Day it be punishable only by Ransom and Imprisonment.) And yet by some it is holden to be Felony at this Day. The like if he take his Goods again §. 9. Taking again stolen Goods.

again from the Felon, and then favoureth him, and letteth him go. See *the Mirror of Justices*, lib. 2. & *Fleta*, lib. 1. cap. 27.

But if the Party robbed take Money or other Goods, &c. of the Thief, to the End he shall favour him, or shall not give Evidence against him, whereby the Thief escapeth; now he is an Accessary to the Felony of his own Goods; though some other seem to take this for Theft-boot, and so to be punishable at this Day only by Ransom and Imprisonment, as aforesaid. ^{6 E. 6. Lam. 286. Crom. 41. P.R. 131. Br. Cor. 1, 2.}

If the Party robbed, or if he that shall have any Goods stolon from him, after Complaint by him made of the Felony (to a Justice of Peace, or to the Constable) shall then take his Goods again, or otherwise be compounded withal, and will not prosecute this Matter against the Felon, but will suffer him to escape after he was once so charged, and perhaps arrested for the same. *Quare*, if this maketh not him an Accessary, for that he did once *agere criminaliter*, by Complaint made to the Officer against the Felon.

I think in such Case the Justice of Peace shall do well (at least) to bind over both the one and the other to the next Quarter-Sessions, or to the next Gaol-delivery, and then to acquaint the Court with the whole Matter.

But if upon Huy and Cry, a Man do arrest a Thief that hath stolon another Man's Goods, and then take the Goods from the Felon, and so let him go; this maketh him an Accessary to the Felony, if not a Principal Felon. ^{27 Aff. 62. Lam. 285.}

Nota que pur biens embles, ou imports, la Party poit aver son Action de Trespass, & apres Appel de Robbery. Co. 4. 43.

^{§. 10. Time.} Also Note, in all Cases of an Accessary after the Fact, it is requisite that the Fact (to which he is an Accessary) be a Felony at the very Time in which he becometh an Accessary to it: For if *A.* giveth a mortal Wound to *B.* upon the first of March, and *C.* knowing thereof, receiveth, &c. *A.* two or three Days together, and letteth him go, and after *B.* dieth of the Wound within the Year; yet this Receipt, &c. makes *C.* no Accessary, because the principal Fact was no Felony at the Time either of the Receipt, or of the letting him go. ^{Stamf. 287.}

By the Statute of 2 Ed. 6. c. 24. Accessaries may be to a Felony done in another County; whereas before the Statute, the Common Law laid no hold of such Accessaries, for that those in another County, upon the Trial, could not have Cognizance of the principal Offence, &c. ^{P. Trial. 2. Stamf. 41. f. 63. b.}

But now by the said Statute, there shall be a Certificate from the *Custos Rotulorum* of the County where the Principal shall be attainted or convicted, &c. See *antea* Tit. *Felony*.

^{Rules.} Note, That if an Offence be made Felony by Statute, though the same Statute doth not expressly mention Procurers, Counselers, Abettors, Receivers, Consenters, and Aiders, &c. yet they shall be taken as Accessaries (within the Compass of the same Statute) even in the same Manner, as if it were Felony at the Common Law. ^{Lam. 285. Stamf. 44.}

^{§. 11. Accessary of Accessary.} A Man may be an Accessary to an Accessary; as if he receive, relieve, or comfort him who is Accessary to a Felon, knowing the same. *Br. Cor. 104.* ^{26 Aff. 52. F. Cor. 190.}

Although

P. Appeal 3. Co. 4. 43. & 9. 117. 119. Flo. 98, 99. Cro. 33. 107. Although the Accessary shall be punished, and shall have Judgment of Life and Member, as well as the Principal which did the Felony; yet the Principal, (yea, all the Principals) ought * first to be attainted (by Verdict, Confession, or Utlary) before the Accessary can be charged, or put to answer (as an Accessary;) and the Acquittal of the Principal, is the Acquittal of the Accessary; for *non est Principalis, non potest esse Accessarius*; but yet the Accessary shall be attached, and surely kept, (and be committed by the Justice of Peace, &c.) until the Principal be attached and attainted. See *Westm. 1. cap. 14.*

§. 12.
* This is now altered by the Statute 1 Ann. c. 9. (viz.) That where a Man is convicted of Felony, it shall be lawful to

proceed against the Accessary, though the Principal had his Clergy, was pardoned or otherwise delivered before Attainder; and such Accessary shall suffer as if the Principal had been attainted.

But though the Accessary in Felony cannot be proceeded against, until the Principal be tried, yet if a Man upon Subtilty and Malice, set a mad Man by some Device to kill another, and he doth so; now for as much as the mad Man is excused, because he can have no Will or Malice, the Law accounteth the Inciter as a Principal, though he be absent, rather than the Crime shall go unpunished. 33 *Eliz. Ba. 57.*

And if the Principal be attainted, though erroneously, that shall not avail the Accessary, but he must answer, &c. Co. 9. 68. b. & 119.

Co. 4. 43. 44. P. Cor. 166. &c. 178. Vid. Br. Cor. 70. 71, 80, 83, 86, 132, 138. Cromp. 34. b. If the Principal die before he be attainted, or if the Principal be found Not guilty by Verdict, or be found by Verdict that he slew the other in his own Defence, or if after Conviction by Verdict, Confession, or Utlary, and before Judgment, he hath his Clergy, or getteth his Pardon, the Accessary in all these Cases shall be * discharged: But it is not safe for the Justice of Peace to discharge such Accessary out of Sessions.

* This is altered by the Stat. 1 Ann. c. 9. as aforesaid.

A Man killeth another *Se Defendendo*, or by Misadventure, and it is so found upon his Trial; the Accessary shall be discharged. For that in these Cases the Principal shall not have Judgment of Death. *Et omne Accessar. sequitur suum Principale.* See *Br. Forf. 13.*

If any Principal Offender shall be convicted of Felony, stand Mute, or challenge above 20 of the Panel peremptorily, it shall be lawful to proceed against the Accessary, either before or after the Fact, as if the principal Felon had been attainted, though he had his Clergy, or was otherwise delivered before Attainder, and such Accessary being convicted shall suffer the same Punishment as if the Principal was attainted.

Persons who buy and receive stolln Goods knowing them to be stole, may be prosecuted for a Misdemeanor, and punished by Fine and Imprisonment, tho' the principal Felon is not convicted, and this shall exempt the Accessary from being punished again, if the Principal is afterwards convicted. *Ibid.*

C H A P. CLXII. *Vide* CIX.*Rules concerning Felony.*

IF a Man committeth Felony in the Time of one King, he may be charged and arraigned for it after, in the Time of another King. 1 E. 6.
Br. Cor.
178.

If a Man do commit Murder, steal Goods, or do any other Felony in one County, and then flieth into another County, and is taken there, and brought before a Justice of Peace there, he shall (by the Justice) be imprisoned in the Gaol in the County where he is taken; and after shall be removed by the King's Writ into the Gaol of the County where he committed the Felony. And the said Justice shall bind Informers over to appear, and to give Evidence against such Felons, at the next general Gaol-delivery, to be holden in that County where the Trial of such Murder or Felony shall be; whither also the said Justice must certifie such Information taken by him. 13 E. 4. 9.
Br. Freth.
Sute 3.

County. If a Man committeth a Robbery, or stealeth a Horse, Beast, or other Goods in one County, and doth carry, lead, or drive the Goods into another County, it is Felony in every County, whither he doth carry or drive them, and the Offender may be indicted or appealed of Felony or Theft, and arraigned, and have his Judgment in any of those Counties: But he cannot be appealed or indicted of Robbery, but only in the County where the Robbery was done; for it is not Robbery in any other County; for Robbery must be done to the Person of a Man. *Br. Cor. 140. & Indictment 26.* 4 H. 7. 5.
34 H. 8.
Br. Co.
171.
Co. 7. 2.

Double. If a Man do steal another Man's Goods, and after another steal-eth the same from him, the Owner of the Goods may charge the first or second Felon at his Choice. 13 E. 4. 3.
4 H. 7. 5.

Also if a Man shall deliver Cloth to a Tailor to make a Garment, if the Cloth be stolln from the Tailor, the Offender may be charged and indicted for stealing the same, either at the Owner's Suit, or at the Tailor's. Pr. 130.
Cro. 70.

Also an Indictment may be, *Quod bona & catalla cujusdam hominis ignoti felonice cepit.* See here before. And any Man may in such Case, both inform the Court, and by their Direction may prefer an Indictment against the Felon, and give Evidence to the Inquest therein. Dyer 99.

Conspiracy. And so if the Owner be known, but will not charge the Felon therewith, any other Person (especially after Proclamation made in the Court, that if any will inform or give in Evidence for the King, he shall be heard) may safely come in, and may inform the Court, prefer an Indictment, and give in Evidence for the King, against the Felon without any Danger of Conspiracy, because it is for the King's Advantage to have the Forfeiture of the Felon's Goods: Yea, in the two former Cases, if the Justice of Peace shall hear of any Person that can inform any material Thing against such a Felon, or against any Felon, the Justice in his Discretion may send for him, take his Information, and may bind him to give Evidence against such Felon: 35 H. 6. 15.
Fitz. Co. 5.
Fit. 115. 2.
Stamf.
163, 173.

For every one shall be admitted to give Evidence for the King.

Stamf. 163.

Also if any Robbery or Theft be committed, and the Party robbed, or other Owner of the Goods, will not charge the Felon therewith, yet every Justice of Peace may cause such Felon (or any Person suspected for such Felony) to be apprehended, and may examine him thereof; and also may send as well for the Party robbed, &c. as for all such other Persons as can inform any Thing material concerning the said Felony, and may take their Informations (upon Oath:) And if upon such Examination he shall find Cause, the said Justice may commit the Offenders, and bind over the Informer. See *antea* in the other Title of *Felony*.

^{3 E. 2. c. 9.} Note also (for the better Prevention and apprehending of Felons) *Hue and Cry* that upon all Homicides, Burglaries, Robberies, and other Felonies, and when Men are put in great Danger, *Hue and Cry* shall be levied, and every Man shall follow the Hue and Cry, and whosoever doth not, and is thereof convicted, shall be attached to appear before the Justices of Gaol-delivery. Also, any Justice of Peace may bind them over to appear before the Justices of Gaol-delivery, and that by Force of the Commission in the first *Assignamus*.

^{3 Ed. 1. 9.} Yea, upon any Felony committed, all Men shall be ready (at the Command of the Sheriff, and at the Cry of the Country) to pursue and arrest Felons, upon Pain to be grievously fined.

^{13 E. 1.} And such Hue and Cry and Pursuit shall be made from Town to *Esape* Town, and from Country to Country: And shall be made by Horse-^{2. 14.} Men, and Foot-Men: And in Case of Robbery, if (after Notice given thereof to some dwelling near) none of the Felons be taken ^{27 El. 13.} within forty Days after the Felony committed, then the whole Hundred where the Robbery was done, shall answer for the Robbery and the Damages: But yet the Inhabitants of any other Hundred, wherein Negligence, Fault, or Defect of Pursuit and fresh Suit shall happen to be, shall answer and satisfy the one Moiety, and half of all and every such Sums of Money and Damages. See more here before, *Tit. Hue and Cry, and Robbery*.

^{3 H. 7. c. 1.} And if a Man shall be slain in the Day-time, (*sc.* so long as it is ^{Co. 7. 6. b.} full Day-light) in a Town not walled, and the Murderer escape, the whole Town where the Murder was done, shall be amerced for this Escape. But if it be in a City or Town walled, then if the Murder, &c. were by Night or by Day, they shall be amerced for the Escape. *Fitz. Co.* 238, 293, 299, 302. *Stamf.* 331. 3 H. 7. 1. P. *Coroners* 13.

And if a Man be slain in the Day-time, out of any Town, then the Hundred shall be charged therewith; and for the Insufficiency of the Hundred, shall all the County be charged, &c. *Stamf.* 34. Yet see *Dyer* 210. b. that the Township shall be amerced for the Escape, although the Murder were committed in a Field of the Town, or in a Lane, &c. And the Justices of Peace are to enquire of such Escapes, and to certify the same into the *King's Bench*. P. *Just.* 19.

^{P. R. 156.} Also every Man is a sufficient Bailiff and Officer to apprehend him that is pursued by Hue and Cry: And if he be taken with the Thing, supposed to be stolen, tho' he neither be of evil Name, nor a Stranger, yet every Man may commit as well such suspected Person, as also such

such Goods, to the Town where they be apprehended, to answer to the King according to the Law; and the Constables of the Town are to carry before some Justice of Peace, as well such Prisoners, as also the Bringers, that the Justices may take their Information against such Prisoner, and may examine and commit such Offender, or Person so suspected.

But if a Man do levy Hue and Cry upon another without Cause, ^{9 Ed. 4. 9.} both the one and the other shall be attached, and carried before a Justice of Peace to answer it, as Disturbers of the Peace, and be bound to their Good Behaviour. ^{Co. 5. 92.}

House. Note, also, That the King's Officers may break open any Man's House, to apprehend any Felon, or any Person that is suspected of Felony, being in the said House. See hereof *antea*, Tit. *Forcible Entry*.

Also the Highways are to be enlarged, and to be cleansed of all Bushes, Woods and Trees, &c. whereby such Offenders may lurk or escape. See *antea*, Tit. *Highways and Robbery*.

Town. And for the better Detecting and Apprehending of such Offenders in great Towns being walled, the Gates are to be shut from the Sun-^{18 E. 1. 4.} setting until the Sun-rising; and no Man shall be lodged in the Sub-^{P. Watch.}urbs from nine of the Clock until Day, unless his Host will answer for him. And in all other Towns Watch shall be kept, from the

Night-walkers.

Feast of the *Ascension* until *Michaelmas*, from the Sun-setting until Sun-rising; and if any Stranger do pass by them, he shall be arrested until the Morning, &c. And if they will not obey the Arrest, then ^{5 H. 7. 5. a.} all Men shall be ready to follow with Hue and Cry, until such ^{Lambert's} Night-walkers shall be taken: And for such Arrest none shall be pu-^{Office of}nished. And the Constables ought to see these Watches duly set and ^{the Con-}stable. kept; and as well the Constables of Hundreds and of Franchises, as also the Petty Constables of Towns, ought to make Presentment to the

Watch.

Justices of Peace at their Sessions, (and to all other Justices thereto assigned) of the Defaults of Watches, and of such as lodge Strangers, for whom they will not answer: And the Justices of Peace at their Sessions shall punish such as be found in Default. *P. Watch 2.* See *antea*, Tit. *Watch*, That every Justice of Peace may cause these Watches to be duly kept.

C H A P. CLXIII. Vide CX.

The Forfeiture of Felony.

§. 1. **T**HE Punishment of every Person attainted of Felony, is four-^{Co. 4. 124.} fold. *scil.* ^{Co. L. 41.}

1. The Offender shall lose his Life, and be hanged between Heaven and Earth, as unworthy of both.

2. He shall lose his Blood, as well in Regard of his Ancestry, as of ^{Ibid.} his Posterity; for his Blood is corrupted, so as he hath neither Ancestor, Heir, nor Posterity. See *Co. 11. 1. b.* & *Littleton* 745. &c. *Co. L. 391, 392.*

3. He shall forfeit his Fee-simple Lands (from the Time of the ^{Ibid.} Offence, &c.) wherein the King shall have *Annum, diem & vastum*, ^{Stat. Prer.} to

to the Intent that the Offender's Wife and Children shall be cast out thereof, his Houses razed, his Trees rooted up, his Meadows ploughed up, and all his Land wasted and destroyed. And after the Year, Day, and Waste, the Land shall go by Escheat to the chief Lord of the Fee: (But yet the Lord may fine with the King for all, *sc.* for the Year, Day and the Waste, and so have the Land presently). *Quære*, if the Lord may enter; it seemeth he cannot. See 17 E. 2. c. 16.

Stamf. de Prer. 49. Fitz. Tra. 48. Reseif. 36.

4. The Offender shall forfeit and lose all his Goods and Chattels, from the Time of his Attainder only.

Reg. c. 16

Co. 3. 3. a.

F. Cor.

317. 334

10 H. 6. 47.

Dyer. 30.

The King shall have all the Goods of Felons which be condemned, and which be fugitive, wheresoever the said Goods be found; *scil.* All their Goods moveable and unmoveable, their Corn growing, and the Profits of their Fee-simple Lands, for a Year and a Day, and the Issues and Profits of their other Lands, during their Lives; and all their Debts due to them by Statute, Recognizance, Obligation or simple Contract, and Money due upon Accounts. And the King, or he to whom the King shall give such Debt, shall have an Action therefore in his own Name; and yet the King shall not pay such Debts as the said Felons did owe.

Uncore le offender ne forfeitera ses Terres pur Manslaughter; nec in cases de Homicide per Misadventure (in fesans chose loyal,) nec pur Homicide sur Necessity, ou se defendendo. Vide Ba. 2, 3. & Co. L. 391.

22 Aff. 96.

Br. For.

33.

43 E. 3. 24.

Br. Forf.

7 H. 4. fol.

ult.

Stamf.

192.

By the Common Law, after a Felon is found guilty before the Coroner, or that it be found, that he did flie for the Felony, there the Coroner, Sheriff, Under-Sheriff, or Escheator, &c. may, (for the King) seize the Goods of the Felon, and praise them by an Inquest, &c. before his Attainder; for by such Thing found before the Coroner, the Goods of the Felon are forfeited without further Enquiry, or Trial of the Felon; and yet the Officer may not in such Case carry the Felon's Goods away, but (after Appraisement as aforesaid) must leave them in the Custody of the Felon's Neighbours where he dwelt, or in the Custody of the Town where the Goods were, to be answered to the King: And if he were indicted of Felony, yet his Goods should not be removed out of his House until he were attainted, but the Officer was to seize and praise them, and to take Surety of the Party, that they should not be imbeziled; and if the Party would not find Surety, then the Officer was to deliver them to the Neighbours, and the said Goods should be kept by his Neighbours all the Time of his Imprisonment: And the Felon must have had reasonable Maintenance of his Goods for himself and his Family, until he were convicted and found guilty of the Felony; and then the Remainder was the King's. See 25 Ed. 3. c. 14. P. Ind. 5. & Bract. fol. 123. & 136. b.

P. Sheriff.

24

And now by the Statute made 1 R. 3. c. 3. it is ordained, That if any Sheriff, &c. or other Person, do take or seize the Goods of any Person arrested and imprisoned for Felony, or Suspicion thereof, before the same Person be convicted or attainted of such Felony, or that the same Goods be otherwise lawfully forfeited; he shall pay to the Party grieved the double Value of the Goods so taken or seized, &c. which Statute seemeth to be but a Confirmation of the Common

P. Indict.

5.

Stamf.

193.

Law, saith Mr. Stamf. fol. 193. save that it giveth the Party grieved a more ample Recompence, and more speedy Remedy than the common Law before did: So that before Attainder or Conviction, the

Goods of the Felon that is in Prison ought not to be seized nor committed to the Town, nor taken out of the Felon's House or Possession. For a Man attainted of Felony shall forfeit such Goods as he hath at the Time of the Attainder, and not at the Time of the Felony committed; and a Felon or Traitor, after the Felony or Treason committed, and before Attainder or Conviction, and Judgment given upon him, may sell (*bona fide*) for his Sustenance, &c. his Goods or Chattels, be they real or personal; but yet they may not disorderly sell or waste their Goods. Therefore it seemeth, that the Officer may still take Surety that the Goods be not imbeziled; and for want of Sureties may seize them, and praise or value them, and then deliver them to the Town safely to be kept, until the Offender be convicted or acquitted. See *Br. Forf.* 44. where Mr. Brook delivers his Opinion, That this Order ought to be observed of every one which committeth Felony, until he be attainted.

Relation. Nay, after Attainder, if they shall grant their Goods or Lands, it shall bind all Persons, except the King and Lord by Escheat; but against them such Grant is void. And as to their Lands, Relation is to be had to the Day of the Felony committed, by the Attainder, by Verdict, Utlary, or otherwise. *Stamf. de Prerog.* 48.

After the Conviction of a Felon, (if the Goods were in the Felon's Possession at the Time of his Conviction) the Town presently stands charged therewith, and shall answer for the Loss or Impairing them, though the Goods were never seized by the Officer, nor delivered to the Town; (except they can shew what other Person hath detained those Goods, and that they could never have Possession of them; which Exception is by Statute of 31 E. 3. P. *Escheats* 3.) So that it shall be safe for the Town to seize such Goods (in whose Hands soever they be found) presently after the Conviction of any Felon; and then it shall be safe for them to do it by Inventory, taken in the Presence, and by the Testimony of some other honest Men. Yet *quare*, for, by the Opinion of *Prisor*, none may seize any Goods for the King, but an Officer who is accountable to the King. 49 H. 6. 1. *Br. Refeif.* 15.

§ 3. *Conviction in Felony* is, where a Man (being indicted of Felony) upon his Arraignment, submitteth himself to be tried by the County, and then is found guilty by the Verdict of twelve other Jurors; or shall confess the Offence upon his Trial, or is outlawed for the same, (*scil.* is pronounced outlawed of the Felony at the County Court.) Also Conviction in all other Offences (by the Common Law) is, where the Offender is indicted, or the Offence presented by a Jury, whereto the Offender pleadeth *Not Guilty*, and is found guilty by the Verdict of twelve Jurors.

Recusant. And yet a Popish Recusant indicted thereof (at the general Gaol-delivery, or Quarter-Sessions for the Peace) and Proclamation there made, commanding the Offender to render his Body to the Sheriff of the same County, &c. If at the next Gaol-delivery or Sessions, the same Offender so proclaimed, shall not make Appearance of Record, such Default recorded shall be a sufficient Conviction in Law of the said Offence. 29 El. cap. 6. & 3 Jac. 4. P. *Recusants* 13. 42.

And sometimes (in other Cases) upon Proclamation made, if the Party shall not appear and yield himself, he shall be thereby convicted or attainted of the Fact, &c. See 5 H. 4. cap. 6. 11 H. 6. cap. 11. 13 H. 6. cap. 7.

And (by divers Statutes) you shall find that an Offender may be convicted (out of Court) either upon the View and Record of the Justice of Peace, or by the Confession of the Offender, or upon Examination of Witnesses before one or two Justices of Peace, and that out of the Sessions. See here *antea*.

And sometimes Conviction may be in the Sessions, upon the Certificate or Presentment of the Justice of Peace. See. Tit. *Alehouses and Highways*.

And sometimes by Confession, or Examination of Witnesses in Court, without any Verdict taken. See *Crompt.* 130, 131. *B. Confess.* 32.

And in some Cases, Conviction shall be taken for Attainder. See *Co.* 11. 59, 60. §. 4. Attainder.

Co. 11. 58.
Stamf.
138. &
185. b.
Co. L.
390. b.

The Difference between Attainder and Conviction in Case of Felony, is, The Person attainted hath Judgment of Death given upon him: The Person Convict, before Judgment, prayeth his Clergy, and hath it, and so preventeth the Judgment, &c. Or after Verdict, Confession or Uttery, the Felon is said to be convicted till Judgment be given.

And so a Man is properly said to be indicted, when the Offence is first found by the great Inquest, or other Jury of Enquiry.

2. Convicted, when the Offender, having put himself upon his Trial, is found guilty by a second Jury; here he is Convict, before he hath Judgment.

3. Attainted, when (after such Conviction) Judgment is given against the Offender, and thereby his Lands are forfeited, and his Blood corrupted. *Co. L.* 391.

CHAP. CLXIV. *Vide CXI.*

Examination of Felons, and Evidence against them.

2 & 3 Ph.
& Ma. 13.
P. Just.
108.

WHEN any Person shall be brought before a Justice of Peace for Murder, Manslaughter, or any other Felony, or for Suspicion thereof; before the Justice shall commit or send such Offender to prison, he shall take, §. 1.

1. The Examination of such Offender.

2. The Information of such as bring him, *viz.* He shall take their Examination and Information of the Fact, and the Circumstances thereof: And so much thereof, as shall be material to prove the Felony, he shall put in Writing within two Days after the said Examination.

3. Also the same Justice of Peace shall bind all such by Recognizance, as do declare any Thing material to prove the Felony, to appear at the next General Gaol-delivery, (to be holden where the Trial of the said Felony shall be) then and there to give in Evidence against such Offenders. See *antea*, Tit. *Felony*.

4. And then the same Justice shall make his *Mittimus*, to carry the Offender to the Gaol.

Or if such Offender beailable, (and that there be two Justices of Peace, present together, the one of them being of the *Quorum*) after such Examination and Information taken, and put in Writing, the said Justices of Peace may bail such Prisoner. 1 & 2 Ph. & M. 13. P. Just. 107.

5. And the said Justice or Justices of Peace shall certify at the next general Gaol-delivery such Examination, Information, Recognizance and Bailment.

And if any Justice of Peace shall offend in any Thing contrary to the true Intent and Meaning of either of these Statutes of 1 & 2, & 2 & 3 Ph. & Ma. the Justices of Gaol-delivery, in their Discretions, shall fine every such Justice of Peace.

And yet for Petty Larcenies, and small Felonies, the Offenders may be tried at the Quarter-Sessions, and the Examinations and Informations may be certified thither, and the Informers bound thither. See hereof, *antea*, Tit. Fel. & 3 H. 7. cap. 3. & Fitz. 251. f.

The Form of the Recognizance see *postea*, Tit. Recognizance.

The Form of the *Mittimus* see *postea*, Tit. *Mittimus*.

The Form of the Bailment see *postea*, Tit. *Bailments*.

Confession. If the Offender, upon his Examination before the Justice of Peace, shall confess the Matter, it shall not be amiss that he subscribe his Name or Mark to it.

If the Offender confesseth the Felony before the Justice of Peace, and notwithstanding he letteth him go, without committing or bailing of him; this seemeth to be a voluntary Escape, and so Felony in the Justice. *Crompt.* 39. 44.

Bailment. Also, if any Person shall be brought before a Justice of Peace, and charged with any Manner of Homicide, (other than that which shall be done in the orderly Execution of Judgment) as it were done *Se* *Defendendo*, or by Casualty, (which are not Felonies) or done by an Infant, a Lunatick, or the like; yet it is the Justice's Part, and safest for him, to commit the Offender to Prison, or at least to join with some other in the Bailment of him, (if the Cause will suffer it) to the End the Party may be discharged by a lawful Trial. See *antea*, Tit. *Homicide*. Lam. 229.

The like is to be done where any Felony is committed, and one brought before the Justice of Peace upon Suspicion thereof, though it shall appear to the Justice, that the Prisoner is not guilty: For it is not fit that a Man once arrested and charged with Felony (or Suspicion thereof) should be delivered upon any Man's Discretion, without farther Trial. *Vide Crompt.* 34. *Lamb.* 229.

§. 2. Evidence by the Wife. The Justices of Peace have Authority (by the Words of the Statute) to bind by Recognizance, all such as do declare any Thing material to prove the Felony. And yet the Wife is not to be bound to give Evidence, nor to be examined against her Husband; for, by the Laws of God, and of this Land, she ought not to discover his Counsel, or his Offence, in Case of Theft, or other Felony. See *Stamf.* 26. b. Nay, I have known the Judge of Assize greatly to disallow, that the Wife should be examined, or bound to give in any Evidence against others in the Case of Theft, wherein her Husband was a Party; and yet her Evidence was pregnant and material to have proved the Felony against others that were Parties to the same Felony, and not directly against the Husband. See *antea*, Tit. *Accessory*. 1 & 2 Ph. & M. 13.

And Sir Edw. Coke, 1. 6. b. saith, That it hath been resolved by the Justices, *Termino Pasch.* 10 Jac. that the Wife cannot be produced

duced either against or for her Husband: *Quia sunt due anime in Carne una.*

And yet it was resolved by the Judges (in the Case of the Lord Audley) that in Criminal Causes the Wife may be a Witness against her Husband, especially where she is the Party grieved. But that in civil Causes she cannot. *7 Caroli Regis.*

But in the Lord Audley's Case before mentioned, who had procured one to ravish his Lady, and was assisting to it himself, it was resolved, That the Wife might in that Case be a Witness against her Husband: But the Reason of that Case, will not hold in other Cases of Felony, for there she was *pars lesa*, and the Case was capable of no other Proof.

^{E. 3. b. 4. 2.} But for Children, I find in the Book of the Discovery of Witches at ^{G. 2, 3, 4.} Lancaster Assizes, Anno Dom. 1612. That the Son and Daughter of Elizabeth Device, a Witch, were not only examined by the Justices of Peace against the said Mother, and the said Examination certified and openly read upon the Arraignment and Trial; but the Daughter also was commanded, and did give open Evidence against her Mother, then Prisoner at the Bar. ^{§. 3. The Child.}

I farther find in the said Book of the Discovery of Witches, that ^{By an in-} two Children, the one about nine Years of Age, the other of four-^{fant.} teen, did upon their Oaths give Evidence against the Prisoners upon their Arraignment. See the Book, fol. 4. La. b. K. 4. a. b. The like was done at Cambridge, at Lent Assizes, Anno Dom. 1629. before Sir Henry Mountague, Lord Chief Justice of the King's Bench. And herewith agreeth Mr. Bract. fol. 118. b. That *Minor infra etatem* may be a Witness or Accuser, *cum tamen accusatus attachietur usq; ad etatem accusantis.*

Accusation or Information by one that is decrepit or unable to travel, is good, and may be taken by the Justice of Peace upon Oath, and certified at the next general Gaol-delivery, or Sessions of the Peace, as the Cause shall require.

If one be an Accuser upon his own Knowledge, Sight, or Hearing, and he shall utter the same to another, that other may be an Accuser. *Dyer 99.*

Accusation by an Approver. See hereof Tit. *Bailment.*

And note, That an Offender confessing any Felony (upon Indictment or otherwise) against himself, may also accuse others of the same Felony: And such Accusation may be taken by the Justice of Peace, &c.

Two inform against another in Matter of Felony, and they vary ^{§. 4.} in their Tales, (*viz.* in the Day and Place, when and where the Felony was committed) such Information is not much to be credited. ^{By Person} See the Story of *Susanna*. ^{discredited.}

Crom.
100.

He that is examined, if Part of what he speaketh be proved to be false, he is not to be credited in the Residue of his Information; and therefore we shall find in 16 E. 4. that a Man who was produced as a Witness in the Chancery, in his Deposition was found to swear falsely in Part, and thereupon his Testimony was utterly rejected.

Mr. Bracton, lib. 3. fol. 118. saith, That an Accuser or Witness, must be *integre fama*, & *non criminofus*, *quia criminofus ab omni Accusatione repelluntur: Ut si Accusans fuerit Latro cognitus vel Utlagatus, vel aliquo genere Felonie convictus vel convincendus. Vide Pl. Co. L. 6.*

A Man

A Man attainted of Perjury, and the King pardons and restores him, &c. *Quare*, whether such a Person's Information shall be allowed against a Prisoner; for the old Saying is, *Once forsworn, ever forsworn*.

A Man attainted of Conspiracy or Forgery shall not be received to give Evidence, or be a Witness. See *Crompt. 127. b.*

But if one be brought before a Justice of Peace upon Suspicion of Felony, although the Information against the Prisoner shall be by such Witnesses, yet 'tis safest for the Justice to take their Information for the King, and to bind them over to give Evidence, &c. and to commit the Party suspected; and upon the Trial to inform the Justices of Gaol-delivery, concerning the Credit of those Witnesses.

Concerning those Accusers or Witnesses, I have farther seen two old Verses in these Words:

*Conditio, sexus, etas, discretio, fama,
Et fortuna, fides; in Testibus ista requires.*

' And yet in Case of Felony any Man (though of no Worth) may be allowed for a Witness or Proof.

' By God's Law one Witness shall not be sufficient against an Offender, for any Sin, Trespass or Fault, *Numb. 35. 30. Deut. 19. 15.*

' And to the same Purpose was the Statute 25 *Hen. 8. cap. 14.* And yet now by our Law one Witness is sufficient, where the Trial is by

' a Jury: For they are all sworn to try the particular Matter where-with the Defendant is charged. So also one Witness is sufficient to convict an Offender before the Justice of Peace in divers Cases, he being expressly therein enabled by Statute.

' And yet in other Cases where the Matter is to be tried by Witnesses only, it is meet that there be two Witnesses.

' But no Man is to be condemned without an Accuser. *John 8. 10.*

When a Prisoner shall be brought before the Justice of Peace for Felony, or Suspicion thereof, but they who bring him, or first complained of him, will not or cannot inform any material Thing against the Prisoner; Yet the Justice of Peace ought to commit the Party suspected after his Examination taken, and to bind over such as did first accuse the Prisoner, or such as do bring him before the Justice to give in Evidence, &c. And if afterwards the said Justice shall hear of any other Persons that can inform any material Thing against the Prisoner to prove the Felony, whereof he is suspected; he may grant his Warrant for such Persons to come before him, and may also take their Information, &c. and may bind them to give Evidence against the Prisoner, for every one shall be admitted to give Evidence for the King. *Stamf. 163. See antea tit. Felony, and tit. Accessary.*

And the Parties grieved ought to be bound, not only to give Evidence, but also to prefer a Bill of Indictment against the Prisoner; and the other Persons who can inform any material Thing to prove the Felony, may be bound to give Evidence only.

5. 3. *Restitution of stolen Goods.* And for that Men should be the readier and more willing to give Evidence against Felons, the Statute 21 *H. 8. cap. 11.* hath enacted, ^{P. Restit. 1 Br. Estra. 8. Doct. & Stud. 64. Stamf. 165, 166.} That if any Man hath Goods stolen from him, if the Felon be thereof found guilty, by Reason of Evidence given by the Party robbed, or Owner of the same Goods, or by any other by his Procurement, (tho' the

the Thief be not hanged, nor have Judgment of Death) then the Party robbed (or Owner of the Goods) shall be restored to his said Goods by a Writ of Restitution, though he never made any fresh Suit or Hue and Cry. Before which Statute the Party robbed could have no Restitution, without suing an Appeal against a Felon, and fresh Suit made.

Also if the Felon shall be outlawed upon the Indictment by Means of the Party robbed, or Owner of the Goods stolen, he shall have Restitution of his Goods by a Writ of Restitution, *ut supra*. *Bar. U. 76.*

And note, That the Justices, before whom any such Felon shall be found guilty, (or otherwise attainted by Reason of Evidence given by the Party so robbed, or Owner, or by any other by their Procurement) have Power to award a Writ of Restitution for the Money or Goods stolen, directed to the Party in whose Hands the same Goods are, &c. 21 H. 8. cap. 11. *Br. Restit. 22.*

Co. 6. 80. Ben. 3 El. Also the Executors of the Party robbed shall have Restitution by Force of this Statute, *viz.* Upon Evidence given by them, or by their Procurement against the Felon, whereby the Felon is attainted or found guilty.

Stamf. 166. P.R. 162. If a Thief do rob or steal Goods from three Men severally, and he be indicted of the Robbing or Stealing from one of them, and arraigned thereupon; in this Case, though the other Two would give Evidence against the Offender, yet shall not they have Restitution of their Goods, by the Meaning of that Statute: For the Felon is not attainted of any other Felony, saving of that whereof he was indicted. But if he be indicted of all the three Robberies or Felonies severally, and arraigned upon one of them, and found guilty by the Evidence given by one of the Parties robbed, &c. yet shall he be after arraigned upon the other two Indictments, to the Intent he also may be found guilty by the Evidence of the other two Persons robbed, and that so they may have Restitution of their Goods stolen, according to the Meaning of the said Statute.

44 Ed. 3. 44. And if a Man steal Goods at divers Times from several Men, and is after attainted at the Suit of one of them only, for the Goods stolen from him, but is not attainted at the Suit of the other; by this Attainder the Felon shall forfeit to the King not only his own Goods, but also the Goods stolen from those others at whose Suit he was not attainted, though the Felon had no Property, but only a Possession of those Goods; and the Property of the Goods which remaineth in the right Owner in this Case is forfeited (by the Owner) to the King, for Default of the Owner pursuing the Felon.

Also if there be divers Thieves, and but one of the Principals attainted, (as before) yet the Party robbed shall have Restitution.

But in these and the like Cases of Restitution, if the Felon hath sold the Goods in a Fair or ** Market Overt*, and after be attainted of the Felony, (upon Evidence given by the Party robbed) here the Owner shall not have Restitution: For by Alienation in a Fair or Market Overt, the Property of the Goods stolen is altered. 12 H. 8. 10. b. Yet if he that bought the Goods in Market were privy to the Felony, such Sale shall not alter the Property, *quia particeps criminis*. See 33 H. 6. 7. Co. 3. 78. *Vide antea tit. Horses.*

The Practise hath been otherwise ever since 5 Car. 1. for if the Criminal is convicted at the Prosecution of the Party from whom the Goods were stolen, he shall have Restitution, tho' sold in a Market; and if the Buyer pleads such Sale, the Plaintiff upon a Demurrer shall have Judgment.

‘ If any Goods of what Nature soever they be, be stolen, purloined, &c. and be sold, exchanged or pawned to any Broker, &c. in London, Westminster, Southwark, or within two Miles of London, the same shall alter no Property. 1 Jac. 21.

A Man shall have Restitution of Money stolen, &c. though it cannot be known. *Br. Restit.* 22.

§. 6. *Waifs.* But if a Man hath a Horse or other Goods stolen from him, and knoweth not by whom; if the Felon waiveth the Goods, flieth and escapeth, and the King's Officer, or the Lord of the Manor, &c. seisseth them, the Party robbed shall have no Restitution, for that he cannot indict and attain the Felon. And yet if the Felon had not the Goods in his Possession at the Time when he fled, but had formerly left them elsewhere, (*sc.* in the Thieves own House, or in any other Man's House, or in the Custody of any other, or had hid them) then are they no waived Goods, nor forfeited, but the Owner may take them again wheresoever he findeth them, without any Restitution awarded. *Co.* 5. 109.

Also in the foresaid Book of Discovery of Witches, I observe one other Thing, *viz.*

That Examinations taken by Justices of Peace in one County, may be (by them) certified in another County, and there read and given in Evidence against the Prisoner. *T.* 2. 3. And in such Cases the Examinations would be taken upon Oath.

Examination certified. The Offender himself shall not be examined upon Oath: For by the Common Law, *Nullus tenetur seipsum prodere.* Neither was a Man's Fault to be wrung out of himself, but to be proved by others, until the Stat. 2 & 3 P. & M. cap. 10. gave Authority to the Justices of the Peace to examine the Felon himself. *Crompt.* 193.

§. 7. *Upon Oath.* But 'tis convenient, in Cases of Felony especially, that the Information (of the Bringers and others) which the Justices of Peace do take against the Prisoner, be upon Oath: Otherwise upon the Trial of the Prisoner, such Examination shall not be given in Evidence against the Prisoner upon his Trial. And so was the Direction of Sir *Edw. Coke*, late Lord Chief Justice, (5 *Jacobi* at *Cambridge* Summer Affizes) upon the Trial of a Felon: For (saith he) in Case of a Trespass to the Value of two Pence, no Evidence shall be given to the Jury, but upon Oath, much less where the Life of a Man is in Question. *Crompt.* 194. See *Lamb. pag.* 210. that he hath heard the Opinions of other Justices of Assize delivered accordingly.

Also if the Witnesses be examined upon Oath, then though it happen they should die before the Prisoner have his Trial, or if they shall not appear upon the Recognizance, and give Evidence against the Prisoner (being laboured, perhaps, to absent themselves) yet may their Information be given in Evidence, as a Matter of good Credit.

Also it is found by Experience, that without Oath many Witnesses will speak coldly against a Felon before the Face of the Justice; yea, and will also speak very sparingly and coldly upon their Evidence given before the Judges of Assize; as I have observed in some, had they not been urged with their former Information taken upon Oath. For the Labouring (by the Offender and his Friends) to such as are to give Evidence (both before the Matter cometh before the Justice of Peace and after) is now grown very common and usual.

Also Mr. *Brook* (*Tit. Examination* 32.) is of Opinion, That every Examination ought to be upon Oath: And so also is the Practice of

the Justices in the higher Courts at *Westminster*, in all the Examinations of Summoners, Viewers, Sheriffs, Clerks, or other Officers, &c.

And here let me admonish all such as are Witnesses against a Prisoner, or any Offender, before a Justice of Peace, or other Magistrate, that they be well advised what they testify upon their Oaths; knowing that in such Cases, if either they should not speak the Truth, or should conceal any Part of the Truth, they should offend against God, the Magistrate, the Innocent, the Commonwealth, and their own Souls, *sc.* Against

God, in despising of him, taking his Name in vain, and belying the Truth.

Magistrate, in misleading and deceiving him, and causing him to do Injustice.

Innocent, in spoiling him of his Name, Goods or Life.

Commonwealth, *sc.* If the Party be guilty, and he clears him by false Witnesses.

His own Soul; for it is Perjury in him, at least in the Presence of God and good Men.

And though he be not presently sensible of the Sore, yet, as one well saith, it will fester, and he shall then feel it most when no Plaister shall be found to cure it: Yea, a Hell will come to them, before they come to Hell; for a Conscience is,

1. *Testis*, a Witness accusing them.
2. *Judex*, a Judge judging and condemning them.
3. *Carcer*, a Prison.
4. *Tortor*, an Executioner; yea, no Tongue can express the Torture of a troubled Conscience.

C H A P. CLXV. *Vide CXII.*

Whether Information, Evidence or Proof of Witnesses shall be taken against the King.

IT seemeth just and right, the Justices of Peace, who take Information against a Felon or Person suspected of Felony, should take and certify as well such Information, Proof and Evidence, as goeth to the Acquittal or Clearing of the Prisoner, as such as makes against the Prisoner: For such Information, Evidence, or Proof taken, and the Certifying thereof by the Justice of Peace, is only to inform the King and his Justices of Gaol-delivery, &c. of the Truth of the Matter.

And Sir *Edw. Coke* (at Lent Assizes at *Bury*, 5 *Jac.*) advised a Coroner, that he ought to have done accordingly, (as I have heard).

But *quare*, if the Justices of Peace, or Coroner, may take upon Oath such Information, Evidence or Proof, as maketh against the King. It seemeth no.

Crompt.
110. b.

Upon Trial of Felons before the Justices of Gaol-delivery, the said Justices will often hear Witnesses and Evidence which goeth to the Clearing and Acquittal of the Prisoner, yet they will not take upon * Oath, * This is altered by the Stat. 1 Ann.
but do leave such Testimony and Evidence to the Jury to give Credit or to think thereof, as they shall see and find Cause.

cap. 9. That the Witnesses must be upon Oath.

A a a a

Popham,

Popham, Chief Justice, (at Cambridge Assizes *tempore Eliz.*) committed one to Prison, who, upon the Trial of a Felon, called out, That he could give Evidence for the Queen; and when he was sworn, he gave Evidence to acquit the Offender.

But by the Statute of 31 *Eliz. cap. 4.* it was enacted, That such Persons as shall be impeached for any Offence made Felony by that Statute (being against imbezilling of Armour, &c.) shall be admitted to make any lawful Proof that they can, by Witness or otherwise, for their Discharge and Defence.

In 7 *H. 4.* We shall find, that one of the Serjeants, as *amicus Curie*, ^{Stamf.} and to inform the Court, (that they should not err) did shew his Opinion to the Benefit of a Prisoner, upon the Insufficiency of the Indictment. The like is to be seen in *Brooks's Case.* 28 *Eliz. in Banco* Co. 4. 39. ^{141. b.} *Regis. Co. 4. 39.*

C H A P. CLXVI. *Vide CXIII.*

Causes of Suspicion.

NOW upon the Examination of Felons, and other like Offenders, these Circumstances following are to be considered.

1. His Name, *sc.* if he be called by divers Names. *Duplex nomen malum omen.*

His Parents; if they were wicked, and given to the same Kind of Fault.

His Education; whether brought up idly, or in any honest Occupation.

His Ability of Body; *sc.* if strong and nimble, or weak or sickly, not likely to do the Act.

His Nature; if civil, hasty or subtil, a Quarreller, Pilferer or bloody-minded, &c.

His Means; if he hath whereon to live or not, 'or *Si solito ditius se habuerit in vestibus & in aliis ornamentis, cibus, & potibus, & hujusmodi.* Br. fol. 120, 122.

2. Quality. His Trade; for if a Man liveth idly or vagrant, (*nullam exercens artem nec laborem*) it is a good Cause to arrest him upon Suspicion, if there have been any Felony committed.

7 *E. 4. 20. Br. Faux Imp. 22.*

His Company; if Ruffians, suspected Persons, or his being in Company with any of the Offenders. 7 *E. 4. 20.*

His Course of Life; *sc.* if a common Alehouse-haunter, or riotous in Diet, Play, or Apparel.

Whether he be of evil Fame or Report.

Whether he hath committed the like Offence before, or if he hath had a Pardon, or been acquitted for Felony before: *Nam qui semel est malus semper presumitur esse malus in eodem genere mali.*

So if he hath been transported or outlawed for Felony, although he hath his Pardon.

3. Marks

If he hath any Blood about him or his Apparel, or that his Weapon be bloody.
 If any of the Goods stolen be in his Possession.
 If any of the Apparel of the Party murdered be in his Possession.
 The Change of his Countenance, his Blushing, Looking downwards, Silence, Trembling.
 His Answers doubtful or repugnant.
 If he offered Agreement or Composition.
 If he hath laboured his Neighbours not to speak thereof.
 The Measure of his Foot, or his Horse's Foot.
 The Bleeding of the dead Body in his Presence.
 If, being charged with the Felony, or called Thief, he saith nothing. *F. Cor. 24.*
 If he fled: *Fatetur facinus, qui iudicium fugit. Co. 11.*
 If he hides himself.
 If he lies lurking in a Place where he had nothing to do.
 If he were the first that found the Party murdered.

3. Marks or Signs.

4. The Fact.

5. The Cause.

6. The Person.

Place, *sc.* if convenient for such an Act, as in a House, in a Wood, Dale, &c.
 Time; the Year, Day, Hour, early or late.
 Where the Offender was at the Time of the Fact, and where the Day or Night before; his Business and Company there.
 And Witnesses to prove all these.
 Manner; if willingly, by Chance or Necessity.

If former Malice.
 If to his Benefit, or what Hope of Gain.
 If for the Eschewing of any Hurt or Danger.

Agens: If Principal or Accessary, Infant, Lunatick, &c.
Patiens: If against the King, Commonwealth, Magistrate, Master, &c.

Note, That a Man accusing another but upon Suspicion is not to be reproved, though the Party accused be proved innocent. *Numb. 35. 28, 31.*

A Felon brought before a Justice of Peace accuseth others; it is sufficient Cause for the Justice to grant out his Warrant for the rest. See *postea*.

A Man going to Execution accuseth another of Felony; it is sufficient Cause to arrest him.

Communis vox & fama, that he did the Offence, is sufficient Cause of Suspicion, *sc.* where such a Felony is done, otherwise not.

But yet for the better Conceiving what may give just Cause of Suspicion, mark some of Mr. *Bracton's* Rules.

Oritur suspicio ex fama. Fama vero quæ suspicionem inducet, vix debet apud bonas & graves (non quidem malevolas & maledicas) sed providas & fide dignas personas, idque non semel, sed sapienter. Vana autem voces populi non sunt audiendæ.

And therefore where the 100thman Proverb is, *Vox populi est vox Dei*, it should be, *Vox populi Dei* should be.

Si Furum in manu alicujus invenitur, vel soli potestate alicujus, tunc ille in cujus domo vel potestate res furtiva inventa fuerit, tenebitur, (nisi aliter ostenderit quod eum inde defendere possit): for, as another saith, *Cum adsumt testimonia verum, quid opus est verbis?*

Si quis nocte cubaverit in domo solus cum aliquo qui interfectus sit, vel si duo aut plures ibi fuerint, & Hatesum non levare, nec plagam a latronibus vel interfectoribus in defensione faciendam accipere, nec ostendant quis de se vel de aliis hominem interfecerit, his casibus mortem dedicere non possunt.

Si quis in domum suam notum vel ignotum acceperit, qui vius ingredi visus est, vero postea nunquam nisi mortuus, dominus domus, si tunc domi sit, vel ibi de familia qui tunc interfuerint, panam capitalem subibunt, nisi forte per patriam fuerint liberati.

Sunt etiam quedam presumptiones ita violentae, ut probationem non admittunt in contrarium; ut si quis cum castella orientata captus sit super mortuum, vel fugienda a mortuo, vel mortem consuetur: quibus casibus non admittitur mortem dedicere, nec alia opus est probatione.

§. 3.
Presump-
tion.

Sir Ed. Coke, l. 6. maketh three Sorts of Presumption: viz.

1. *Violenta*, (as in this last former Case) which he saith is *plena probatio*.

2. *Probabilis*, which (saith he) moveth little.

3. *Presumptio levis, seu temeraria*, which moveth not all.

Confession
of the Of-
fender.

And yet in Cases of Felony, &c. the Confession of the Offender, upon his Examination before the Justice, shall be no Conviction, except he shall after* confess the same again upon his Trial or Arraignment, or be found guilty by Verdict of twelve Men, &c.

* Co. 11.
302. vide

To the like Purpose also is the Rule of the Civil Law, *Si quis in Judicio sponte de seipso confiteatur, & postea maneat in Confessione, satis est*: If any Man in Judgment do confess of himself of his own Accord, and doth persevere in his Confession, it is enough, and such Confession shall be taken for an Evidence of the Crime.

But yet at Lent Assizes at Cambridge, Anno quarto Caroli Regis, before Sir Francis Horsey, upon the Arraignment of a Prisoner for Felony, his Examination, which was taken before the Justice of Peace, wherein he had confessed the Felony, was only given in Evidence, no other Evidence then coming in upon his Trial; and the Prisoner upon that his own Confession before the Justice of Peace was found guilty by the Jury of Life and Death, and had Judgment, &c.

Also in Cases of secret Murders, and in Cases of Poisoning, Witchcraft, and the like secret Offences, where open and evident Proofs are seldom to be had, there half Proofs or probable Presumptions are to

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be allowed, and are good Causes of Suspicion, and are sufficient for the Justice of Peace to commit the Party so suspected.

But note, (by the Common Law) That in an Action of False Imprisonment brought against the Constable (or other Person that shall arrest another upon Suspicion of Felony) it is no Plea for them to say, that the Plaintiff was suspected of Felony: But they must alledge, That there was such a Felony committed, and that the Plaintiff was suspected for the same: For Suspicion only, without a Felony committed, is no Cause to arrest another. Yet see the Statute of 5 E. 3. that if any Man have any evil Suspicion of any Person for Felony, &c. be it by Day or Night, they shall be arrested by the Constables of the Towns, &c. and kept in Prison till they be delivered by the Justices, &c. *Hic cap. 129.*

Also the Defendant must alledge some special Matter (in Fact) to prove that he, who was arrested, was suspected of Felony, (as to say, that the Party arrested is a Man of an evil Fame, or a vagrant Person, &c.) otherwise one Man may arrest any other, yea every Man in the Town may be arrested, when any Felony is committed.

Mes quel est suffisant cause de suspicion, & quels uemy, serra trie per les Justices. Fi. 127.

Also the Defendant must plead, That he himself had a Suspicion of the Plaintiff: For if the Constable (or other Person that shall arrest one that is suspected) doth not suspect him himself, it seemeth he may not arrest him upon his own Authority: And yet by the Opinions of Keble, Vavasor and Townsend, as well the Constable, as others in his Aid, may arrest one that is suspected of Felony, upon the Suspicion and Complaint (made to the Constable) of the Party robbed. 2 H. 7. 15, 16. Br. Faux Impris. 14. yet alii contra ibid. sc. that the Suspicion can extend to no other, but only to him that hath the Suspicion, and Br. 14 H. 8. 16. a. accordeth: *tamen quare.* For if Felons may not be arrested or stayed but only by those who shall suspect them, and that others, may not aid and assist the Party that shall suspect another to have robbed him, many Felons shall escape, and go unpunished. See Ple. 46. a. & Fiach 127.

But now by the Statute 7 Jac. 5. the Constable, &c. in the former Cases may plead the General Issue (Not guilty), and give the said special Matters in Evidence.

Also if the Constable, or other Person, shall arrest another upon Suspicion of Felony, by Virtue of a Warrant from a Justice of Peace, such Warrant shall excuse him, it being given in Evidence, &c. *Vide postea tit. Warrants.*

CHAP. CLXVI. *Vide CXIV.*

Bailment and Mainprise. See antea cap. 12.

Bailment, Mainprise or Replevin, is the Saving or Delivery of a Man out of Prison, or the Freeing or setting at Liberty one arrested before he hath satisfied the Law; sc. by finding Sureties to appear at a certain Day, and to answer, and be justified by the Law.

And

§. 1.
Definition]

And to this Purpose these three Terms (Bailment, Mainprile and Replevin) be indifferently used in our Statutes and Books.

§. 2. *Nature of it.* He that is bailed is taken or kept out of Prison, and delivered (as it *Stamf. 65. P. Mainp. 18.* were) into the Hands of his Sureties, who are reputed his Guardians, and who may keep him with them, and may imprison him. See 22 *H. 6. Br. Surety 8. & Mainp. 89.*

If the Mainpernors or Sureties do at any Time, or in any Case, doubt that their Prisoner, or the Party by them bailed, will fly, they may take him, and bring him before any Justice of Peace; and upon their Prayer the said Justice of Peace may and ought to discharge such Sureties, and commit the Party to Prison, except he shall find Sureties, &c. *Cromp. 157.*

So if a Prisoner be bailed by insufficient Persons, the Justice of Peace *ex Officio* may cause him to find better Sureties, and may commit him till he shall so do; for the Stat. of *West. 1. cap. 15.* requireth, That such as be bailed be let out by sufficient Surety. *P. Mainp. 2. Vide antea tit. Surety for the Peace.*

If the Prisoner cannot find sufficient Sureties, the Justice of Peace is not bound (nay ought not, knowing their Insufficiency) to let the Prisoner to bail. See *Co. 10. 101.*

§. 3. *Sufficiency.* And therefore, altho' the Number of such Sureties, their Sufficiency, and the Sum wherein they shall be bound, resteth in the Discretion of the Justices; yet it is safe for them to take two Sureties at the least, and those to be Subsidy-men, and to be bound in good Sums, especially if the Prisoner be in for Felony, or Suspicion thereof: For the more able the Sureties are, the rather they will cause him that is bailed to appear. And again, for Want of Taking sufficient Bail the Justices of Peace are fineable. And at *Cambridge Assizes, A. D. 1613.* Judge *Warberton* threatened to have set 40*l.* Fine upon two Justices of Peace, who had bailed a Prisoner that was committed for Suspicion of Felony, and appeared not, for that the Sureties were not Subsidy-men.

§. 4. *Oath.* *Quare,* If the Justices of Peace may not examine upon their Oaths the Sureties concerning their Sufficiency, or whether they be Subsidy-men. The Justices of the Common Pleas (7 *H. 6. 25.*) did examine the Ability of the Sureties upon their Oaths, &c. And that which the higher Courts do, may be a good Rule for others. *Vide 2 H. 7. f. 1.*

Nature. Now Bailment by the Justices of Peace (in Case of Felony, or for any other Matter) is always in a certain Sum of Money, (as 40*l.* &c.) the which Sum the Sureties, &c. shall forfeit to the King, if the Prisoner appeareth not at his Day. *Stamf. 77. 2 H. 7. 20.*

Also the Bailment in Felony is, *Ad standum rectum de latrocinio predicto secundum Legem, &c.* Which seemeth to imply, That they which have taken him to bail shall not only cause him to appear, but also to answer the Felony. *Stamf. 77. d.*

§. 5. *Danger.* And in this Business of Bailment (being a Matter of much Weight) it behoveth the Justices of Peace to be very circumspect, as well for Fear of Wrong by Denying it to him that isailable, as also for Fear of Danger to the Service it self, by yielding where it is not grantable; and for Fear of Danger to themselves in both Cases.

For whosoever detains Prisoners who areailable, after they have offered sufficient Sureties, shall be amerced to the King: And he that 6. c. 10.

P.Sh.8.11. that doth take any Reward for the Deliverance of such, shall be amerced to the King, and pay double to the Prisoner.

39. So on the other Side, if one who by the Law is notailable, shall be let to Mainprise, this shall be adjudged a negligent Escape to him or them that do let him at Mainprise; and for such an Escape or Offence, they shall be fined and punished as followeth.

3 E. 1. 15. If the Sheriffs, Constable, or any Bailiff of Fee who hath the Keeping of Prisoners, shall bail any Person which is notailable, and be thereof attainted, they shall loose their Fee and Office for ever. And if the Under-Sheriff, Constable, or Bailiff, or such as have Fee for keeping of Prisoners, do it contrary to their Masters Will, or any other Bailiff being not of Fee, they shall have three Years Imprisonment, and make Fine at the King's Pleasure. *Doct. & Stud.*

135.

27 E. 1. c. 3. Note, That the Sheriffs and other Officers which do let to Bail any Persons forbidden (by the Statute of *Westm. 1.* to be bailed, shall be punished by the Justices of Gaol-delivery, according to the Form of the same Statute; or else by the said Justices they may be put to their Fine, as for an Escape punishable at the Common Law. 35 E. 3.

39.

Quere, if it be not Felony for them to bail Felons, or Persons suspected for Felony, for that these Officers have no Authority at this Day to bail such Prisoners, *Et vide hic cap. 117.*

Bre. de Mancupatione est, lon home est prise sur suspicion de Felony, ou est endite de Felony, pur que obose il est mainpernable per Ley, & il offer suffic. Sureties al un q'ad Authority de luy lesser al Mainprise, & il refuse de ceo faire. Fitz. 249.

Note, what Persons be forbidden to be bailed by the said Statute of *Westm. 1.* see *postea sub. hoc tit.*

Note also, that the Sheriff or Constable might at the Common Law have bailed one suspected of Felony, (because they were Conservators of the Peace;) but now that Power is transferred to the Justices of Peace only. See the Stat. 1 R. 3. c. 8. & 3 H. 7. c. 3.

1 & 2 P. & M. c. 13. If any Justices of Peace do let to Bail or Mainprise, any Person who (for any Offence by him committed) is declared not to beailable, or forbidden to be bailed by the aforesaid Statute of 3 Ed. 1. the said Justices of Peace so offending shall pay such Fines as shall be assessed by the Justices of Gaol-delivery where the Offence shall be committed. *Fitz. 251. i.* See *hic postea*.

1 & 2 P. & M. c. 13. But the Justices of Peace and Coroners within *London* and *Middlesex*, and in all other Cities, Boroughs, and Towns Corporate, have Authority to let to bail Felons and Prisoners, as they have formerly accustomed. *P. Just. 107.*

If the Sheriff, Justices of Peace, or other Officers, shall bail one that is notailable, such Bailment being against Law, *Quere* if the Recognizance or Bond taken upon such Bailment (for the Appearance of the Prisoner) be not void. See the Opinion of *Moile*, 37 H. 8. 1. and of the Court there, that such a Bond taken by the Sheriff is void.

Now to shew farther the Authority of the Justices of Peace in this Behalf.

1 & 2 P. & M. cap. 13. No Person arrested for *Man-slaughter*, or *Felony*, or Suspicion thereof, (beingailable by the Law) shall be let to Bail or Mainprise, by any Justice of Peace but in open Sessions, or by two Justices of Peace

at

at the least, whereof one to be of the *Quorum*, and the same Justices to be present together at the Time of the said Bailment.

And this Bailment the said Justices shall certify in Writing (subscribed with their Hands) at the next Gaol-delivery, &c. *Vide antea Tit.*

Examination of Felons

Also before the Bailment of such Prisoner, the same Justices or one of them, shall take the Examination of the Prisoner, and Information of them that bring him, or of the Fact and Circumstances thereof; and so much thereof as shall be material to prove the Felony shall be put in Writing, before they make the Bailment: Which Examination, Information, and Bailment, they shall certify at the next general Gaol-delivery, *ut supra*.

But if any Justice of Peace hath taken the Examination of the Felon, and Information against him, and after hath sent him to Gaol; now upon Bailment of him by other Justices, they need not take any new Examination of the Prisoner or Information against him, but under their Recognizance (or together therewith) to certify by what Justice of Peace the Felon was committed, to the End that at his Hands these Examinations and Informations may be required, if he have not certified them.

By the Opinion of Mr. *Crompt.* a Prisoner (taken for Felony) before his Commitment, ought to be examined and bailed by two Justices of Peace being together, (as before:) But after that the Prisoner is examined and once committed, then he may be bailed by any one Justice of Peace. *Quare* thereof.

§. 7. The Justices of Peace which shall send any Prisoner to the Gaol, ought to shew in their *Mittimus* the Cause of the Commitment, to the End it may appear whether such Prisoner be bailable or no.

And if the Justices of Peace shall commit one to the Gaol, with these Words in the *Mittimus*, *sc.* without Bail or Mainprise, (shewing a certain Cause in their *Mittimus*;) yet if such Prisoner be bailable by Law, other Justices of Peace may bail him: (Yet *Quare*, seeing their Authority is equal:) But if the Prisoner were committed without Bail or Mainprise, and without shewing Cause in the *Mittimus*, then other Justices of Peace cannot (or at least shall not do well to) bail him, without making the other Justices, who committed him, privy thereto; for he might be committed for such Cause, as that he is not bailable, (as for Treason, &c.)

I have seen a Report of a Case, *Term. Trin. 37. El.* That upon an Assembly of all the Judges and Barons at *Serjeants Inn*, it was resolved and agreed by them to be put in ure in their Circuits, that if a Justice of Peace should commit a Man to the Gaol for Felony, for which by the Law he is not bailable, but by his *Mittimus* he commits him generally, not shewing any Cause, if any other Justices of Peace shall bail him, not knowing the Matter, &c. they shall be fined for the same; for they at their Perils ought to inform themselves of the Truth of the Matter before they bail him.

Note, where a Man is bailable, yet when he cometh before the Justices he must offer Surety to the Justices, otherwise they may commit him to Prison. *Br. Peace* 7.

Next it followeth, that I shew what Persons be bailable, and what not.

P. Main. 1. It appears by the Statute of *Westm. 1. cap. 15.* that in these four §. 8.
 Stamf. 72. Cases following, a Man was not bailable at the Common Law. Persons not bailable.

Br. Mainp. 47. F. N. B. 66. e.

1. No Person taken for the *Death of a Man, &c. for Murder*, or any other Homicide, was bailable by the Common Law.

B. Mainp. And yet the Justices of the King's Bench do use to bail them; yea,
 11. 47, 57, although it be for Murder. *Br. Mainp. 60, 63, 78, 47.* See the Sta-
 60, 63, 68, tute 3 *H. 7. c. 1.*
 F. Cor.

Also the Stat. 1 & 2 *P. & M. cap. 13.* seemeth to admit that for
 361. 12 *Man-slaughter*, and all other *Homicides* (except Murder only) the
 P. Just. Slayer may be bailed by the Justices of the Peace; which also I take
 107. Lamb. to be the common Practice at this Day. But let the Justices of
 336. Peace be well advised herein, *viz.* that the Offence be but *Man-slaughter*, and not Murder.

P. Main. 1. Also it seemeth the Justices of Peace cannot bail him that hath
 committed *Man-slaughter*, if either he hath confessed the Offence
 upon the Examination, (*vide postea, Tit. Bailment*):

Of that he be taken with the Manner:

Or that it be apparently known that he killed the other. *Vide pag. sequent.*

He that hath *dangerously hurt* another, may be bailed, &c. See before, & *Stat. 3 H. 7. cap. 1.*

2. Secondly, no Person taken by the *King's Command* was bailable by the Common Law: But this must be intended of the King's verbal Command, (when upon his meer Motion he commandeth a Man to Prison) or by his Privy Council, which are incorporate to him. See *Stamf. 72. e. Br. Mainp. 37, 47.*

Stamf. 73. 3. Thirdly, no Person taken by the Command of the King's Justices was bailable by the Common Law: But this must be intended of their absolute Command: As if the Justice commands one to Prison without shewing Cause why he doth so command, or for Misdemeanour done in his Presence, or for some other Cause which lieth in the Discretion of the Justice, (more than is ordinary Power, &c.) and that such Imprisonment be for a Punishment.

See pag. preceed.

And therefore if the *Lord Chancellor of England*, or Lord Keeper of the Great Seal, (who have Power to commit one to Prison wheresoever they are in *England*) shall command or commit one to Prison (by such their absolute Authority) such Person shall not be bailed.

And so if the *Justices of the King's Bench* shall command one to Prison.

And so if the *Justices of the Court of Common Pleas* sitting in their Court,

Or *Justices of Assize* in their Places; if these shall commit any to Prison they are not bailable.

But where any Justice or Justices shall commit one rather to be safely kept, than for a Punishment, such Commitment may be said to be an ordinary Command; and the Party so committed is bailable.

Terms de Ley.

4. Fourthly, *Trespassers in the Forrest* were not bailable by the Common Law: But that was remedied by the Stat. 1 *E. 4. c. 8. & 7 R. 2. cap. 4. F. N. B. 67. c.*

P. Just. 107.

But now, for that by the Statute 1 & 2 *P. & M. c. 13.* it is provided, that no Justice or Justices of Peace shall let to bail any Person

con-

contrary to the aforesaid Statute of *Westm. 1.* (made 3 *E. 1.*) cap. 15. and so the Statute of *Westm. 1.* is now as a Line, whereby the Justices of Peace are to guide themselves in Cases of Bailment; I will shew here what Persons areailable by that Statute of *Westm. 1.* and what not.

By this Statute of *West. 1.* no Prisoner shall be let to Bail which is taken in any of these 13 Cases following.

Abjured.

1. Such as have *abjured the Realm*, shall not be bailed.

Approver.

2. Nor any *Approver or Appellor*, for that he confesseth the Felony, and himself Guilty, before he can accuse another, as Coadjutor or Helper with him in doing the same.

3. Nor he which is *appealed by an Approver*, so long as the Approver doth live, except he be of good Name, or that the Approver doth waive his Appeal. See *Stamf. 74.* or that the Approver be vanquished. 25 *E. 3.* 42.

Burning a House.

4. Nor he which is taken for *burning a House, &c.* feloniously. *Vide antea Felony by the Common Law.*

Excommunicate.

5. Nor any *Excommunicate Person*, taken (at the Bishop's Request, &c. upon his Certificate into the Chancery) by the Writ of *Excom. capiend. F. N. B. 66. c.*

And yet when the Party is so taken, if he will conform himself to the Laws of Holy Church, and give Surety for his Obedience, he shall have a Writ *de Cautione admittenda*, directed to the Bishop; and if the Bishop will not, then he shall have a Writ to the Sheriff to deliver him. See *Fitz. 63. c. d.*

Felon taken in the Manner. Thief openly defamed.

6. Nor any *Felon taken within the Manner.*

7. Nor a *Thief openly defamed and known.*

Outlawed in Felony.

8. Nor he which is *Outlawed in Case of Felony*; and yet in some Cases, such as be Outlawed may be bailed by the Court, &c. See *Stamf. 74.*

Prison breaker.

9. Nor he who hath *braken the King's Prison.* *Vide antea Felony by Statute.*

Treason.

10. Nor he which is taken for *Treason* touching the King himself.

Coining.

11. Nor he which is taken for *falsifying the King's Money.*

Counterfeiteth the King's Seal.

12. Nor he which counterfeiteth the King's Seal. *Br. Mainp. 59.*

Manifest Offence.

In all these Cases, if the Cause for which the Party is imprisoned be Treason or Felony, or otherwise toucheth Life or Member, then shall he not beailable; otherwise he may be bailed.

13. Nor he which is taken for a manifest Offence; as if a Man be indicted and imprisoned for a Riot, or other great Offence, before Justices, by Force of the King's Commission of Oyer and Terminer, this (and the like) are the manifest Offences whereof the Statute speaketh. See *Fitz. 250. f.*

§. 9. Personsailable.

But by the same Statute of *West. 1.* such Persons areailable, which be taken in any of these six Cases following

1. Persons suspected.

First, He that is taken (or indicted) for light Suspicion of Felony, isailable. See *Lamb. 335. F. N. B. 249. g. 250. c. 251. f.*

He

Stamf. 74 c. He that is taken upon Suspicion of Burglary, Robbery or Theft, if he be not of evil Fame, nor that there be any strong Presumption against him, is bailable.

16 E. 4. 7. A Man had stolen certain Hogs, and (for that he was of evil Fame) Br. Main. he was committed without Bail; yet if he could have brought Proof 95. or Witness that he bought them, he should have been bailed.

Cro. 154. A Man is arrested for Suspicion of Felony, and brought before the Justice; if it shall appear that there is no such Felony committed, the Party may be set at Liberty without Bail: But if there be a Felony committed, though the Prisoner can clear himself, yet the Justices may either commit or bail him. *Vide antea*, Tit. Felony by Statute.

P. Main. 2. Secondly, he that is taken (or indicted) for petty Larceny, that a- 2. Petty Larceny. Fitz. 250. mounteth not to 12 d. (or above the Value of 12 d.) if he were not 6. guilty of some Larceny before, is bailable.

P. Main. 2. Thirdly, such as be indicted of Larceny by Inquest of Office before 3. Persons indicted by Inquest of Office. the Sheriff, or before Coroners or Bailiffs, &c. or in any base Court, they shall be set at Liberty upon sufficient Surety.

Stamf. 74. And yet they shall not be bailed, if they be not also of good Fame; Fitz. 247. but if they be of good Fame they are to be bailed, though they be & 250 c. indicted as aforesaid (before Sheriffs, Bailiffs, Coroners, or before any B. Mainp. other such Officers, by their Office, or in any base Court): Yet *quere* 97. if the Justices of Peace out of their Sessions may safely bail such Persons; for being indicted, they are more than vehemently suspected, &c. *Vide pag. sequent.*

One that was indicted before the Coroner, that he had killed another *se defendendo*, was (by the Justices of Gaol-delivery) bailed till the next Assizes to purchase his Pardon. 26 El. Crompt. 153. See *antea*, Tit. Misadventure.

One that is indicted before the Sheriff for stealing of a Horse (which seemeth to have been in his Torn) may be bailed by the Sheriff (if he be of good Fame) by the Writ *de Manuptione*. F. N. B. 249. g.

Also one that was indicted of Burglary, as Principal, pleaded Not guilty, and was after bailed. 29 Lib. Ass. Fitz. Mainp. 9. See *infra*.

Another that was indicted of Robbery was bailed. 41 Lib. Ass. 30. Br. Mainp. 61.

If any Murderer being indicted, and after arraigned at the King's Suit, shall be thereof acquitted within the Year and Day, the Justices before whom he is acquitted shall not suffer him to go at large, but either shall remit him to Prison, or else may bail him (at their Discretion) till the Year and Day be passed, to the End that the Wife, or next Heir to the Party murdered, may have their Appeal of the same Murder within the Year and Day after the same Murder done, &c. 3 H. 7. c. 1. Fitz. 151. g.

Stamf. 74. But such as are attainted or convicted of Felony are not bailable. Persons d. For although it doth not appear by any Words of the said Statute of Attaint or Convict. F. Cor. 297. 354. West. 1. that it doth prohibit the Bailment of such as be attainted by Verdict, yet it is to be intended, that the Statute doth as well prohibit the Bailment of those attainted by Verdict, as it doth of them who are attainted by Outlawry: And therefore if a Prisoner, after he hath pleaded Not guilty, be attainted by Verdict, That he killed a Man *se defendendo*, or by Misfortune, yet shall he not be bailed by the Justice of Peace. *Tamen vide antea*, Tit. Felonies by Casualty, &c.

Stamf. 15. c. F. N. B. 246. c. "Que il sera bail per les Justices (de Gaol-delivery) devant queux il sera try, &c.

And if a Man that is arraigned of Homicide doth plead Not guilty, and is found guilty, and doth pray his Clergy, and is reprieved without Judgment, he is notailable: For being convicted of the Felony, he is more now than vehemently suspected, and the Intendment of the Law in Cases of Bailment is, that it resteth indifferent whether he be guilty or not, until Trial. Dyer 179. See Br. Mainp. 94.

The same Reason seemeth to hold, if a Man be found guilty of Homicide before the Coroner: Yet see 22 *Ass. p. 94. Br. Cor. 90.* that such areailable as are found (before the Coroner) but suspicious.

Man-slaughter.

One *Poynes* was found guilty of *Manslaughter* before the Coroner, and it was certified in the King's Bench; and *Poynes* at Bar prayed to be bailed, but it was denied him: For (as *Coke* said) per-adventure it may be Murder. And it appears by the Statute of Queen *Mary*, that in *Manslaughter* the Party is not alwaysailable, for if he confess the Fact he is notailable; which *Haughton* granted, and said, that he is notailable if the Fact be notorious, which the Court granted. *Poynes's Case, Mich. 13 Jac. Roll's Rep. part 1. p. 268.*

Also a Man convicted of Felony remaineth in Prison, and after obtaineth the King's Pardon; the Justice of Gaol-delivery may bail him till the next Gaol-delivery, that he may then come with his Pardon and plead it. 2 *E. 6. Br. Mainp. 94.*

Accessories.

4. Those that be charged with the Receipt of Thieves or Felons, or of Command, or Force, or of Aid (in Felony done) beailable. P. Main. 2. Stamf. 71. Stamf. 71.

And it seemeth that *Abettors, Consenters and Procurers*, and all other *Accessories to Felonies*, are within the Equity of this Statute, and areailable: Yea, *Accessories* (as well in Case of the Death of a Man, although it be Murder, as in Case of other Felonies) areailable (if they be of good Fame,) until the Principal be convicted or attainted; but after the Principal is attainted the Accessary shall not be bailed, but kept in Prison: And yet if (after the Attainder of the Principal) the Accessary shall appear, and plead Not guilty, or other Plea, he shall be bailed. The Reason is, for that when the Accessary shall make Default, then is it as a *fugam fecit*, and a great Cause of Suspicion of the Thing; but when he appeareth, by that the Suspicion is taken away, and so he isailable. See more in *Br. Mainp. 6, 9, 22, 34, 64 & 97.* 40 E. 3. f. 28. Stamf. 71. Br. Main. 58.

If a Man be accessory to two, and the one Principal is attainted, though the other be not, yet the Accessary shall not be bailed. Stamf. 71. F. Co. 200.

In *Felony*, if the principal die in Prison, or be attainted of another Felony, the Accessary shall be bailed. *F. Cor. 378. Br. Mainp. 91.*

But note, that in Case of *Treason*, the Principal shall not be bailed.

Principals.

Also the said Statute of *West 1. cap. 15.* doth no more restrain the Principals (to be bailed) than the Accessaries, in those Cases where the same Statute doth not prohibit to let to Mainprife; And therefore if a Man be indicted of *Burglary* as Principal, yet he may be bailed. *Stamf. 74. Br. 56. 29. Ass. Pl. 44.* Stamf. 74. B. Mainp. 58, 90. F. Main. 9.

Also the Principal in an *Appeal of Robbery* may be bailed; and so may he be bailed upon an Indictment of Robbery. *Br. 61. 75 &*

97. yet in an Appeal of Robbery the Book 6 H. 7. f. 1. b. seems to the contrary.

Stamf. 71. But the Principal in the *Death of a Man* is notailable, either
Br. 56. 97. by the Common Law, or by the Statute of *West. 1.* Yet see here-
of before in this Title, that the Justices of the King's Bench do use
to bail them. Also see there for what Homicides the Justices of Peace
may bail one that is a Principal.

West. 1. 5. Fifthly, those that be charged with (or guilty of) any Tres-
pass that toucheth not Loss of Life nor Member, beailable by the
P. Main. 2 Statute of *West. 1. 15.* But yet let the Justice of Peace have a Care,
that Bail be not prohibited by any other later Statute in such Cases of
Trespafs.

Fitz. 250. If any Person be committed to Prison by Process from the Sessions
8. made upon an Indictment upon any penal Statute (not prohibiting
Lam. 337. Bail, or for any Trespafs) he may be bailed (out of Sessions) by two
Br. 97. Justices of the Peace, the one being of the *Quorum*.

Or he may have a Writ out of the Chancery directed to the Ju-
stice of Peace, or to the Sheriff, to take Surety of him for his Ap-
pearance before the Justices at their Sessions, &c. Or he may have a
Certiorari to the Justices of Peace, to remove the Record into the
King's Bench; and a *Habeas Corpus* to the Sheriff, to remove the Bo-
dy thither also. *Fitz. 250. g. h. i. & 251. c.*

Cro. 197. If Process from the Sessions shall go forth upon an Indictment of
234. Trespafs, &c. it seemeth that any one Justice of Peace may take
Bail of the Party to appear at the Day, &c. to answer to the In-
dictment: And the same Justice may thereupon make his *Superfedeas*
de cap. Indictat. (and so of the Exigent; for otherwise, besides the
Mischief of Imprisonment, the Party may be outlawed before the
Sessions. See some Precedents therein, *postea*, Tit. *Precedents*.)

Note, that the Justices of Peace are not to bail any Prisoner, ex-
cept he be committed for such Cause whereof the said Justices of
Peace be competent Judges, *sc.* such Causes as they may hear and
determine.

Lam. 337. And therefore if a Man be taken upon Process of Rebellion issu-
Cro. 152. ing out of the Chancery, the Justices of Peace are not to bail him.
And M. Crom. reporteth of two Justices of the Peace who were
fined for bailing one in such a Case.

If a Man be arrested by Force of any Process, Writ, Bill or War-
rant, in any Action personal, the Justices of Peace are not to bail him.

Persons condemned in any of the King's Courts, and by Virtue
thereof committed to Prison; and Persons being in Execution upon a-
ny Statute or Recognizance, &c. at the Suit of any Person, the Ju-
stices of Peace are not to bail any such.

P. Main. 2 6. Sixthly, he that is appealed by an Approver (being no common
Fitz. 250. Thief, nor defamed after the Death of the Approver) isailable by
d. the said Statute of *West. 1.*

An Approver or Appellor is he who hath committed some Felo-
ny, which he confesseth, and then appealeth others, accusing them
that they were Coadjutors or Helpers with him in doing the same.
*Et sic dicti, quia ad hoc probandum, quod in Appello allegarunt, te-
nentur, idque vel * Duello, vel per Patriam, sc. Jurat. legalium ho-
minum, juxta reorum electionem. Cow.*

And

And this Accusation by the Approver must be done before the Coroner, either assigned to the Felon by the Court, to take and record what he saith; or else may be called by the Felon himself, and required, for the good of the King and the State, to record his Accusation, and what he saith. *Ibid. Exceptiones contra Apellum. Vide Bract. lib. 3. c. 20. &c.*

Note, That a Man cannot become an Approver (or an Accuser of others) before Justices of Peace (because they have no Authority to assign him a Coroner): Nevertheless it seemeth both reasonable and serviceable, that if a Felon will become an Approver, that is, will confess his Felony, and also accuse others that were Coadjutors with him in doing the same Felony, (or other Felonies) before a Justice of Peace, that such Justice may take his Confession, and commit him to the Gaol, and may also grant out his Warrant for the apprehending others, that are so accused.

Concerning an Approver, observe these Rules.

1. One cannot be an Approver, but in Felony or Treason. 9 H. 6.
2. One cannot be an Approver, but upon Indictment only. 1. H. Stamp.
3. An Approver must accuse the other of such an Offence as he himself did together with the other. Stamp. 143.

Execution. Again the Stat. of 23 H. 6. c. 10. taketh away Bail from all such as be in Prison by Condemnation, Execution, *Capias utlagatum*, Excommunication, Surety for the Peace, or by the special Command of any Justice, prohibiting that such be not bailed either by the Sheriff or other Officer or Minister.

There be divers Statutes which take away Bail from the Offenders, and that not only upon their solemn Conviction after publick Hearing, Trial and Judgment; but also upon the Record of one or two Justices of Peace, or by private Examination and Confession of the Offender, or Proof of Witnesses, or such other private Trial had before the Justices of Peace out of their Sessions, most of which I have here set down, leaving the rest to the Reader's better Search.

C H A P. CLXVII. *Vide CXV.*

Where Bailment is taken away by Statute.

Where Bail is taken away. NO Person being imprisoned or taken for any of the Offences or Causes hereunder mentioned, shall be bailed or let to Mainprise, otherwise than as hereafter followeth, &c.

Abjured. Such as have abjured the Realm shall not be bailed. *West. 1. c. 15. 13 E. 1. c.*

Accountants. Accountants found in Arrearages before Auditors shall be imprisoned (without Bail) until they have satisfied their Master all Arrearages.

Alehouse-keeper. Alehouse-keepers without Licence shall be committed to Prison for three Days without Bail; and before his Delivery shall enter into Recognizance with two Sureties, that he shall not keep any common Alehouse, &c. *Vide antea, Tit. Alehouses.*

Alehouse-keeper prohibited by two Justices of Peace, and notwithstanding continuing his Selling, &c. shall be committed for three Days as aforesaid. *Ibid.*

See antea
Tit. Ale-
houses. Alehouse-keepers without Licence, for their second Offence, shall be committed to the House of Correction for one Month: And for every such their Offence after shall be committed to the House of Correction, there to remain till they be delivered by Order from the General Sessions. *Ibid.*

Alehouse-keepers, Inn-keepers, and Victuallers, which shall suffer Townsmen to continue drinking in their Houses contrary to the Statute of 1 Jac. c. 9.

Or which shall sell less than one full Ale-quart of their best Beer or Ale for 1 d. and of the small two Quarts for 1 d.

Such Offenders, not having sufficient whereby to be distrained for the Forfeiture, shall be committed to Prison until they have paid the Penalty.

Aliens conveying Bows and Arrows into any Parts beyond the Seas, without Licence, shall be committed until they have made Fine (by Discretion of the Justices of Peace in their Sessions) and give Surety for the Payment thereof. 33 H. 8. c. 9. P. Arch. 6.

Appellers or Approvers shall not be bailed. *West. 1. c. 15.*

Nor he which is appelled by an Approver. *Ibid.*

Armour. Armour: Persons going or riding armed, contrary to the Statute of Northampton, and being thereof convicted, shall be imprisoned until they have prayed such Fine as shall be therefore imposed upon them. *See postea sub hoc tit.*

3 El. c. 2. Arrest: If any Person shall procure one to be arrested in another
P. Dam. 3. Man's Name, he not knowing thereof, or without his Consent, such Offender being convicted thereof, shall suffer six Months Imprisonment without Bail; and before his Delivery shall pay to the Party so arrested treble Costs, Damages, and Expences; and also shall pay unto the Person, in whose Name he procureth such Arrest, ten Pounds for every such Offence. *Arrest in the Name of another.*

If any of a petty Jury in London shall be attainted by the Verdict of a Grand Jury, and therefore committed to Prison; or if any of a petty Jury in London shall receive any Money, or Reward, or Promise thereof, of the Defendants in the Attaint, for the Intent to give such his or their Verdict. *Attainted by Verdict.*

As also the Defendant's Giving or Promising such Reward, &c. every such Offender being therefore committed to Prison, shall there remain without Bail, &c. 12 H. 7. cap. 21.

Bastardy. Bastard: The Mother or reputed Father of a Bastard-Child, that shall not perform the Justice's Order, after Notice thereof, shall be imprisoned until they shall put in Sureties according to the Statute. *Where Bail is taken away.* See before, Tit. Bastardy. P. Rast. 1.

The Mother of a Bastard-Child, committed to the House of Correction for her first Offence, shall there remain for one whole Year; and for her second Offence for one whole Year, and farther, until she can put in good Sureties for her good Behaviour not to offend so again. *See Ibid.*

Breakers of Prison are not bailable. *West. 1. c. 15.*

Bridges: Surveyors and Collectors appointed for the repairing of Bridges, if they refuse to account for the Money by them received, they *Where the Bail is taken away*

they shall be imprisoned until they have truly accounted. 22 Hen. 8. cap. 5. P. Bridges. 4.

Burning
Houses.
Conspira-
tors.

Burners of Houses feloniously are not bailable. West. 1. c. 15. Persons conspiring to indict another of Felony, are not mainpernable or bailable. 27 Ass. Pl. 12. Fitz. Mainp. 7.

Constables.

Constables and Church-wardens, neglecting to levy the Forfeitures for Abuses in Alehouses, &c. not having sufficient whereby to be distrained for their Forfeiture of forty Shillings, they shall be committed to Prison until they have paid the same Forfeiture. See antea, Tit. Alehouses. 1 Jac. cap. 9.

Constables neglecting to execute the Justice's Warrant concerning Alehouses unlicensed, the Constable shall be committed to the County Gaol, there to remain without Bail, until he hath punished the Alehouse-keeper, or until the Constable shall pay forty Shillings to the Use of the Poor. 3 Caroli Regis.

Constables neglecting to whip Trespassers in Corn, Wood, Orchards, &c. (at the Justices Command) shall be imprisoned until they have caused the Offender to be whipped. See Tit. Trespass. 23 H. 6. cap. 10.

Persons condemned in any of the King's Courts, and by Virtue thereof committed to Prison, they shall not be bailed until they have agreed with the Plaintiff. 1 R. 2. c. 12. 2 H. 5. c. 2. Fitz. N. B. 121. a.

Conjurers: Vide Witches.

Counterfeiters of the King's Seal or Money are not bailable. Westm. 1. cap. 5.

Cloth: Refusers to be Overseers of Cloth shall be imprisoned until they have paid the Forfeiture. See antea, Tit. Cloth.

Such Persons as shall be convicted for making of deceivable Cloth, if two Justices of Peace shall make Certificates thereof, and make their Warrant to the Church-wardens, &c. for the levying of the Forfeitures, and if the said Offenders shall not have whereby they may be distrained for the same Forfeitures, the said two Justices of Peace may commit the Offenders to the common Gaol, there to remain without Bail, until Payment shall be made of the Sums so forfeited, &c. hic antea, Cloth.

Deer.

Deer: Persons committed to Prison for committing any Offence prohibited by the Stat. 5 Eliz. cap. 21. concerning unlawful Hunting or Killing of Deer, shall remain there three Months and farther, until they shall find sufficient Sureties for their Good Behaviour for seven Years, &c. See hic antea.

Diers.

Diers using Logwood, and being thereof convicted, they shall remain in Prison without Bail, until they have satisfied the Forfeiture. 23 Eliz. cap. 9. P. Dying 1. & 39 El. cap. 11.

Also such Offence (of using Logwood) being found by the Examination of any Justice of Peace, if the Offender shall refuse to be bound (by the Justice of Peace) to appear at the next Gaol-delivery or Quarter-Sessions, &c. then the said Justice of Peace may commit such Offender to the Gaol, there to remain until such Offender shall be bound accordingly. See antea, Tit. Dying, 39 El. cap. 11.

Where

Bail is ta-
ken away.
Excom-
municated

Excommunicated Persons, taken by a Writ de Excommunicato capi-endo, or yielding their Bodies to the Sheriff or other Officer, upon any Writ of Capias awarded, and Proclamation thereupon made, according to the Stat. of 5 El. cap. 23. provided for the due Execution of the said Writ de Excom. capi-endo, such Persons shall not be bailed. See 23 H. 6. c. 10.

Execution: Such Persons as are in Execution upon any Statute or Recognizance, or upon Judgment given in the King's Court at the Suit of any Person, they shall not be bailed until they have agreed with the Plaintiff. 1 R. 2. c. 12. 23 H. 6. c. 10. Fitz. Na. Br. fol. 93. c. 6.

127. a. And yet then the Justices of Peace are not to bail them.

Pheasants. See *Partridges*.

Felons taken for the Death of a Man are not bailable; and yet if it be not Murder, and their Offence not apparent, it seemeth they may be bailed. See *hic antea*.

2. Felons taken with the Manner are not bailable. *West. 1. c. 15.*

3. Nor if it be apparently known that they did the Felony. *Ibid.*

4. Nor if they confess the Felony upon the Examination before the Justices of Peace. *Crompt. 152. b.*

5. Nor if it be a Thief openly known. *West. 1. 15.*

6. Nor if he be of evil Fame by credible Report. *Br. Mainp. 75.*

Yet in these former Cases of Felony, if the Theft be not twelve Pence, or above the Value of twelve Pence, the Justice of Peace may bail the Prisoner, it being no Felony of Death.

7. Nor is he which is convict or attaint of Felony bailable. See before *sub hoc tit.*

5 El. c. 21. P. Fish. 7. c. **Accessaries in Felony** shall not be bailed, after that the Principal (or any one Principal) is attainted. But before the Principal is attainted the Accessary is bailable by the Common Law. *Stamf. 71.*

Fish: Destroyers of Ponds, Pools or Moats, wherein any Fish are; or unlawfully to fish in any several Pond, Pool or Moat, to the Intent to take, kill or destroy any Fish there; every such Offender, being thereof lawfully convicted, shall have three Month's Imprisonment, and then shall find sufficient Sureties for the Good Behaviour for seven Years after, or else shall remain in Prison without any Bail, until they have found Sureties accordingly.

11 H. 7. c. 23. P. Fish. 12. 25 El. c. 9. P. Fish. d. 1. 2. Gaugers, Packers or Searchers of Fish, that shall take any Extortion for doing their Office, shall have forty Days Imprisonment without Bail.

3. Eaters of Flesh upon any Fish-day shall forfeit and pay for every Time 20 s. or else suffer one Month's Imprisonment without Bail, (after any lawful Conviction in that Behalf). 5 El. cap. 5.

Forcible Entry or Detainer; Persons convict thereof shall not be bailed until they have paid their Fine, or have found Sureties by Recognizance for Payment thereof. See *antea tit. Forcible Entry*.

Forestallers, Regrators and Engrossers, being thereof convicted, shall be imprisoned for two Months without Bail. 5 E. 6. c. 14. P. 4.

Forgers of any Deed, Writing sealed, Will, or Court-Roll;

2. And the Assenters thereto:

3. And the Publishers thereof, knowing the same, &c.

5 El. c. 14. P. 1. 2. Every of the Offenders aforesaid, (in Cases of Forgery) being thereof convicted, shall suffer perpetual Imprisonment during their Lives, where any Man's Estate of Inheritance, Freehold or Copyhold, shall be defeated, charged or molested thereby: Otherwise the Offender shall suffer one Year's Imprisonment without Bail.

Fowl: Destroyers of any Pheasant, Partridge, Pigeon or House-dove, or of any Heron, Mallard, Duck, Teal, or other Fowl; or Shooters at any such Fowl, and the Offence proved before any two Justices of Peace; every such Offender shall be committed for three Months without Bail, unless the Offender shall forthwith pay to the

Use of the Poor there 20s. for every such Fowl so destroyed, &c. See *antea tit. Partridge.*

Fraud. **Fraudulent Conveyances, Gifts, Bonds or Suits, &c.**

1. The Parties thereto.

2. The Defenders or Justifiers thereof, or Putters thereof in Ure, 13 El. c. 5. P. 1, 2.

3. And those who shall assign over any Lands, Leases or Goods, so to them conveyed, knowing the same.

Every Person being of any of these last Offences lawfully convicted, shall suffer Imprisonment one half Year without Bail. See more Stat.

14 Eliz. 11. c. 27. c. 4.

Gamets. **Games unlawful.**

1. The Maintainers of Houses or Places for any unlawful Game. 33 H. 8. c. 9.

2. Players in common Houses or Places at any such Game.

3. Players elsewhere at any unlawful Game.

Every Justice of Peace, seeing or finding any such Offence, may imprison the Offenders till they find Sureties by Recognizance no more to offend in the Premises, &c. See *antea tit. Games unlawful.*

Gaols. **Gaols.** Collectors or Surveyors for Gaols (in certain Shires) refusing to make Account shall be committed to Prison, there to remain until they have made true Account. 23 H. 8. c. 24. & 13 El. c. 25. But these Statutes are herein now expired.

Guns. **Guns.** Such Persons as shall shoot in, keep, carry, or use any Gun, Dag, Cross-bow or Stone-bow, contrary to the Statute of 33 H. 8. c. 6. (upon Proof thereof made before any Justice of Peace) shall be imprisoned until they have paid 10l. for every such Offence. See *antea tit. Guns.*

No Person under the Degree of a Lord shall shoot in any Hand-gun within any City or Town at any Fowl, or other Mark upon any Church, House or Dove-Cote: Neither shall any Person shoot in any Place any Hail-shot, or any more Pellets than one at one Thing, upon Pain to forfeit 10l. and to have three Month's Imprisonment. 2 & 3 E. 6. c. 14.

Hares. **Hares.** Every Person which shall shoot at, kill or destroy, with any Gun or Bow, any Hare.

2. Or shall trace or course any Hare in the Snow:

Where Bail is taken away. 3. Or shall take or destroy any Hare with Cords, or any other Engine.

Any of these last Offences being proved before any two Justices of Peace, the Offender shall be committed for three Months without Bail, unless the Offender shall forthwith pay to the Use of the Poor there 20s. for every Hare so destroyed or taken. See *antea tit. Partridges.*

Hatters. **Hatters.** Which shall take above two Apprentices.

2. Or which shall take an Apprentice for less Time than seven Years.

The Offenders in either of the same Cases shall suffer one Month's Imprisonment without Bail. 8 El. c. 11. P. Hats 3.

Hawks. **Hawks.** Takers (unlawfully) of any Hawks, or of their Eggs, out of another Man's Ground, and being thereof lawfully convicted, shall have three Months Imprisonment, and then shall find Sureties for their Good Behaviour for seven Years after; or else shall remain in Prison without Bail until they find Sureties accordingly. 5 El. 2. P. Hawks 1. See 11 H. 7. c. 7. hic postea Partridges.

Hawkers. between the 1st of July and the 31st of August, the Offence being proved before any two Justices of Peace, the Offenders shall be committed to the common Gaol for one Month without Bail, unless they

they pay forthwith 40*s.* for every such Hawking; and 20*s.* for every Pheasant or Partridge that they shall so kill or take. 7 *Jac.* 11. See *antea tit. Partridges.*

Highways: Bailiffs and High Constables, who shall not pay the Forfeitures by them collected, shall be imprisoned until they have paid the same. See before Tit. *Highways.* 2 *Ph. & M. cap.* 8. *P.* 11. Highways.

Honey. See *Wax.*

Hostlers or Inn-holders which shall make any Horse-bread, (contrary to the Statute 21 *Jac. cap.* 21.) or which shall not sell their Horse-bread, Hay, Oats, Beans, Pease, Provender, or other Kind of Victual (for Man or Beast) for reasonable Gain, and be thereof lawfully convicted, &c. the second Time, shall be imprisoned by the Space of one Month without Bail. 21 *Jac. Regis. cap.* 21. Hostlers.

So of such Hostlers and Inn-holders, as are allowed by the said Statute to make Horse-bread within their Houses, if the Horse-bread which any of them shall make be not sufficient, lawful, and of due Assize, &c. and that they be thereof lawfully convicted the second Time, they shall be imprisoned one Month without Bail. *Ibid.*

Hunting: If any Layman, not having in Land 40*s.* per Annum, or if any Priest or Clerk, not having 10*l.* Living per Annum, shall have or keep any Hound, Greyhound, or other Dog for to hunt, or any Ferrets, Hays, Hare-pipes, Cords, Nets, or other Engines, to take or destroy Deer, Hares, Conies, or other Gentlemens Game, and shall be thereof convicted at the Sessions of Peace, every such Offender shall be imprisoned for one whole Year. 13 *R. 2. c.* 13. *P.* 1. Hunting.

If any Person shall keep any Greyhound for Deer or Hare, not having sufficient living, and shall be thereof convicted before any two Justices of Peace, he shall be committed for three Months without Bail, unless he forthwith pay 40*s.* for having such Greyhound. See before Tit. *Partridge,* 1 *Jac. c.* 27.

Hunters, and Takers of the King's Deer. See the Statute of *Charta de Foresta,* c. 10.

Hunters or Killers of any Deer or Conies (in the Night or Day-time) in any Park or Warren, or in any other inclosed Grounds, being thereof lawfully convicted, every such Offender shall suffer three Months Imprisonment, and find sufficient Sureties for his Good Behaviour for the Space of seven Years after, or else continue still in Prison without Bail, until he shall find Sureties accordingly. 5 *El. c.* 21. 3 *Jac. c.* 13. *P. Forest* 9. & 7 *Jac.* 13. Where Bail is taken away.

The Statute of *Westm.* 1. 20. provideth, That Trespassers in Parks and Ponds, being thereof attainted, shall yield to the Party wronged great Damages, and shall have three Years Imprisonment, making Fine at the King's Pleasure; and at the End of three Years find good Sureties not to commit the like Trespass afterwards, or for Want of such Sureties shall abjure the Realm, or be outlawed. See *Fit.* 67. d. & *Dyer* 238. 5 *H. 5. f.* 1. *Fit. Judgment* 62.

But note, That this Statute *de malefactoribus in Parcis* extendeth only to Hunting or Killing of Beasts there, and not to other Trespas. 34 *E. 3. f.* 11. *Fit. Judgment* 144. And if a Man hunts there, or shall but come into a Park for that Purpose, yet he shall be punished according to this Statute. *Fit. Judgment* 62.

The Statute of 19 *H. 7. 11.* ordaineth, That if any Person having no Park, &c. of his Own, shall keep any Deer-hays or Buck-stalls;

or if any Person shall stalk at any Deer without Licence, the Offenders being thereof convicted, shall be committed to Prison, till they have found Surety for the Payment of the Forfeiture of the Statute.

King. *King:* Speakers of False News, which may Cause discord between the King and his People, &c.

And Speakers of False News or Lies of any of the Peers or great Officers of the Realm.

The Offenders in either of the former Cases shall be imprisoned until they have brought him into the Court who was first Author of the Tale. 3 E. 1. c. 33, 2 R. 2. c. 5. P. News 1. See Dyer 155. & 285. and the Statute of 1 & 2 P. & M. c. 3. 1 El. c. 6. & 23 El. c. 2.

3. No Person committed by the special Command of the King, or by the Command of any of his Privy Council, shall be bailed. See *antea sub hoc tit.*

4. No Person committed by the special Command of any of the King's Justices shall be bailed. P. Mainp. 1. & 23 H. 6. c. 10. See *Ibid.*

5. So in all Cases where a Stat. ordaineth, That an Offender shall be imprisoned at the King's Will or Pleasure, there the Prisoner can not be bailed or delivered, until the King hath signified his Pleasure of him (as if one be imprisoned for going or riding armed, contrary to the Statute of Northampton, made Ann. 2 E. 3. c. 3.) 24 E. 3. f. 3. Br. Contempts 6. Stamf. 71
b.
Br. Main-
Pr. 40.

And in such Cases the Prisoner is to redeem his Liberty with some Portion of Money, as he can best agree with the King or his Justice for the same: And the Justices before whom such an Offender shall be convicted, may assess such Fine or Ransom according to their Discretions, and upon Payment thereof may bail the Prisoner; for the King therein signifieth his Pleasure by the Mouths of his Justices. See the first Title of *Forcible Entry*. Lamb.
556.

Inn-keepers. Inn-keepers or Inn-holders: See *hic antea tit. Alehouse-keeper, and Hostler.*

Where Bail is taken away. Labourers and Artificers, departing from their Work before it is finished, shall have one Month's Imprisonment without Bail. 5 Eliz. c. 4. P. Labour 10. El. 4

Servants. 2. Servants departing before their Term be ended, (unless it be for some Cause to be allowed by some Justice of Peace).

3. Servants departing at the End of their Term, without any Quarter's Warning given before two lawful Witnesses.

4. Persons (compellable to serve) that upon Request made shall refuse to serve for the Wages rated and appointed by Proclamation, &c.

5. Persons (compellable to serve) that have promised or covenanted to serve, and do not serve accordingly.

Every of these four last recited Offenders (upon Proof of the Offence before any two Justices of Peace, &c.) shall be committed to Ward, there to remain without Bail, until he shall be bound (to the Party offended) to serve and continue with him according to the Statute. Eliz. 4.
P. Lab. 6.

Apprentices. 6. Persons refusing to be bound Apprentices (according to the Statute) upon Complaint thereof made to any Justice of the Peace, he may commit such Offenders to Ward, who shall there remain until they will be bound to serve according to the Statute 5 Eliz. 4. P. Lab. 14.

Women Servants. 7. Women (of the Age of twelve Years, and under forty, and unmarried) that shall refuse to serve, shall be committed to Ward, there

there to remain until they shall be bound to serve according to the Statute 5 Eliz. 4.

8. Masters giving Wages, and Servants, Workmen or Labourers, taking Wages (or other Commodity) contrary to the Rates assessed by Proclamation, &c. every such Master shall have ten Days Imprisonment without Bail; and every such Servant, Workman or Labourer, shall have twenty-one Days Imprisonment without Bail. 5 Eliz. 4. P. Lab. 4.

9. Masters retaining or hiring a Servant for less Time than for one whole Year, shall have ten Days Imprisonment without Bail: But *quere*, whether this extends to Servants in Husbandry, or only to Servants, to Artificers and Tradesmen. P. Lab. 1.

10. Masters retaining a Servant that is departed out of Service without shewing a Testimonial according to the Statute, it seemeth such Master shall have ten Days Imprisonment without Bail. 5 El. 4.

11. Masters taking Apprentices contrary to the Statute, it seemeth by the general Words of the Statute, that such Masters shall have ten Days Imprisonment without Bail.

8 H. 6. 4. P. Liver. 2. *Liveries*: Such Persons as at their proper Costs shall buy or wear any Livery, Clothes or Hats, to have Maintenance, and be thereof convicted, shall have one whole Year's Imprisonment without Bail. But this Statute is now repealed by the Statute 3 Car. 4.

In an Appeal of *Maihem*, where upon Evidence the Act shall appear to be heinous, the Offender or Defendant shall not be bailed. 6 H. 7. f. 1. §. 70.

30 Eliz. 16. *Mauling*: If any Person shall disobey the Restraint of Mauling, or any other Order made in Sessions touching the same, and be thereof convicted (before any two Justices of Peace), he shall be committed to the Gaol for three Days, (without Bail) and after there to remain until he shall become bound in 40^l. to perform and obey such Order or Restraint. See *antea tit. Maul*.

If any Person shall buy any Barley or Malt after such Restraint, he shall be imprisoned as aforesaid. *Ibid*.

Money: Persons taken for falsifying the King's Money shall not be bailed. West. 1. cap. 15.

Musters: Persons absenting themselves from Musters, being commanded to muster before any having Authority for the same, and having no lawful Impediment.

2. And Persons (being commanded to muster as aforesaid) that shall not bring with them their best Furniture and Armour, which they have for their own Person.

4 & 5 P. & M. 3. The Offender in either of the former Cases shall for every such Offence suffer ten Days Imprisonment without Bail, unless they agree with Two of the said Commissioners to pay to the King's Use 40 s. a Time for every such Offence. P. Captains 12.

To muster is to make a Shew of Soldiers well armed and trained before the King's Commissioners in some open Field, *ubi se ostendentes praeludunt praelio*. Co. L. 71.

3 Jac. 4. 7 Jac. 6. And it is worthy of Observation, that by the Law before the Conquest, the Musters and Shewing of Armour should be *uno eodemq; die per universum regnum, ne aliqui possint arma familiaribus & notis accommodare*, &c. *Ibid*.

News: See before, King.

Oath:

Oath of Allegiance.

Oath: Refusers to take the Oath of Allegiance (being lawfully tendered to them) shall be committed to the common Gaol; there to remain without Bail until the next Assizes or Quarter-Sessions. See before, *Tit. Oath and Recusants.*

Parliament, and Knights of the Parliament. See *hic postea Sheriffs.*

Park: Hunting therein. See *Hunting and Hunters.*

Partridges.

Partridges: If any Person shall shoot at, kill or destroy (with any Gun or Bow) any Partridge, Pheasant, or other Fowl, &c.

2. Or shall take, kill or destroy any Partridge, Pheasant or Pigeon, with Setting-dogs and Nets, or with any Manner of Nets, Engines or Instruments;

3. Or shall take out of their Nest, or willingly destroy in the Nest, Eggs of any Partridge, Pheasant or Swan;

4. Or shall have or keep any Setting-dog or Net, or take Partridges or Pheasants, (except they have Sufficiency of Estate, &c.)

Every of these four last recited Offenders (upon Proof of the Offence ^{1 Jac. 27.} before any two Justices of Peace) shall be committed to the common Gaol, there to remain for three Months without Bail, unless the Offender shall forthwith pay 20 s. for every such Fowl and Egg so taken and destroyed; and 40 s. for having such Setting-dog or Net. See *Tit. Partridges.*

5. Hawkers at Partridge or Pheasant in *July* or *August*, (upon Proof ^{1 Jac. 11.} of the Offence before any two Justices of Peace) every such Offender shall be committed to the common Gaol, there to remain for one Month without Bail, unless the Offender shall forthwith pay 40 s. for every such Hawking, and 20 s. for every Pheasant or Partridge so killed or taken. See *Ibid.*

6. Persons convicted according to the Stat. of 23 *El. c. 10.* for destroy- ^{13 El. 10.} ing or taking of Pheasants or Partridges in the Night-time shall have one Month's Imprisonment without Bail, unless they pay the Penalty of that Statute within ten Days; and farther become bound with good Sureties, for the Space of two Years not to offend so again.

7. Persons convicted according to the Stat. of 11 *H. 7. c. 17.* for Tak- ^{11 H. 7. 17. Co. 7. 18.} ing the Egg of any Hawk or Swan, out of their Nests, shall be imprisoned for a Year and a Day, and fined at the King's Will. See *Hawks.*

Perjury.

Perjury: Persons committing Perjury by his, or their Deposition ^{Eliz. c. 9.} in any Court of Record or Court-Baron, being thereof lawfully convicted, shall have six Months Imprisonment without Bail. *P. Per. 1, 2. & 14 Eliz. cap. 11.*

2. So of Procurers of such Perjury, they being thereof lawfully convicted, and having not to pay the Penalty of the Statute, they shall have one Year's Imprisonment without Bail.

Physicians.

Physicians: He which is committed to Prison by the President of the College of the Faculty of Physick of *London*, &c. shall there remain without Bail, until he shall be discharged by the same President, or by such as he shall authorize. ^{1 M. cap. 9.}

Plague.

Plague: Refusers to pay the Rates for the Relief of Persons infected ^{1 Jac. 31. P. 1, 2, 3.} with the Plague, and not having whereon to be distrained for such their Rate, they shall be committed to the Gaol, there to remain without Bail until they satisfy the same, and the Arrearages. See *Tit. Plague.*

Poor.

Poor: Refusers to pay their Rates towards the Relief of their Poor, ^{43 Eliz. 2. P. 2, 4.} Setting them on work, or Putting out of poor Children to be Apprentices, and not having whereon to be distrained for such their Rates, they shall be committed to the Gaol, there to remain without Bail until they shall pay the same and the Arrearages.

2. O-

P. 2. 1. 2. Overseers (of the Poor) refusing to make their Account, or refusing to pay (to the new Overseers) such Arrearages, Sums of Money, or Stock as shall remain in their Hands upon their Account made, they shall be committed to the Gaol, until they have performed the same. See *antea tit. Poor*.

P. 2. 3. Overseers, negligent (or otherwise failing) in their Office, shall forfeit for every Default 20s. and not having whereon to be distrained for such Forfeiture they shall be committed to the Gaol, there to remain without Bail until the said Forfeiture shall be paid. See *ibidem*.

P. 8. 12. 4. The Grandfather or Grandchild, or the Parents or Children, refusing to relieve one the other, in such Manner as shall be assessed by the Justices of Peace at their Sessions, shall forfeit for every such Default 20s. for every Month. And not having whereon to be distrained for such Forfeiture, they shall be imprisoned, as aforesaid, until the said Forfeiture shall be paid. See *Ibid.*

P. 13. 5. Refusers to pay their Rates towards the Relief of the Prisoners in the King's Bench or Marshalsey, and not having whereon to be distrained for such Rates, they shall be imprisoned without Bail, until they shall pay the same. See *antea tit. Stock of the Shire*.

Where
Bail is taken
away.

P. Sacra. 2. *Prayers*: Such as offend against the Statute 1 Eliz. c. 2. concerning Uniformity of Common Prayer and Service in the Church, and thereof lawfully convicted by Verdict of twelve Men, or by their own Confession, or by the notorius Evidence of the Fact, they shall be committed without Bail: See the Statute 1 Eliz. 2. for in some Cases the Offender shall suffer six Months Imprisonment, in other Cases one whole Year's Imprisonment, in other Cases Imprisonment during Life.

Preachers: Disturbers of Preachers in the Time of their Sermons, and their Aiders and Procurers. Mar. 3.

2. Such as shall disturb the Arresting of any such Offender;

3. Such as shall rescue any such Offender being apprehended;

1 M. 1. c. 3. Every such Offender (being thereof convicted before any two Justices of Peace) shall be committed to the Gaol, there to remain without Bail for three Months, and farther till the Quarter-Sessions, &c.

P. 1. 2. But *quare* if this Statute be in Force.

Prison: Breakers thereof shall not be bailed. West. 1. cap. 15.

Prison-
Breakers.

5 El. ca. 5. *Prophefiers*: To the Intent to make Disturbances within the King's Dominions, every such Offender being thereof lawfully convicted, for his first Offence, shall suffer one Year's Imprisonment without Bail; and for the second Offence, shall suffer Imprisonment without Bail during his Life. P. Prophef.

2 & 3 P. & M. c. 15. *Purveyors*: Taking Purveyance within five Miles of either University of Cambridge or Oxford, without Licence, &c. and being thereof convicted, they shall suffer three Months Imprisonment without Bail. See *antea tit. Purveyors*.

23 H. 6. *Purveyors*: (or other Officer) of any Nobleman, &c. Taking any Thing of any Subject against his Will, such Offenders shall be committed to Prison without Bail, until they shall re-deliver the Goods so taken, or the Value thereof. See *Ibid.*

15 El. *Recusants*: Persons suspected to be Jesuits, Seminaries, or Massing-Priests, and being examined thereof, (by any having lawful Authority in that Behalf) if they shall refuse to answer directly thereto, they shall be imprisoned without Bail, until they shall make direct answer thereto. 35 El. cap. 2.

Recusants.

2. Per-

Oath of Allegiance

Persons suspected, if they shall refuse to answer the Justice of Peace upon Oath, whether they be Recusants or no, they shall be committed to the common Gaol, there to remain without Bail, until the next Assizes or Quarter-Sessions. See *antea tit. Recusants.*

Parliament

3. Popish Recusants refusing to take the Oath of Allegiance, (being lawfully tendered them) they shall be imprisoned till the next Assizes or Quarter-Sessions as aforesaid. See *Ibid.*

4. Every other Person of the Age of eighteen Years, refusing to take the Oath of Allegiance, shall be committed until the next Assizes or Quarter-Sessions as aforesaid. See *antea tit. Oath.*

5. A Woman Recusant convicted, and not conforming her self, being therefore committed to Prison, shall there remain without Bail, until she shall conform her self, &c. See *antea tit. Recusants.*

Where Bail is taken away.

6. A Woman covert refusing in the open Assizes, or at the Quarter-Sessions of the Peace, to take the Oath of Allegiance, she shall be committed to the common Gaol without Bail, until she will take the said Oath.

7. If any Woman or Child under the Age of 21 Years, shall pass over the Sea without lawful Licence, the Master of any Ship permitting the same, shall suffer Imprisonment 12 Months without Bail.

8. Recusants refusing to declare what Armour, &c. they have, or if they, or any other Person, shall hinder or disturb the Delivery of such Armour to any Person lawfully authorized to seize the same; every such Offender shall have three Months Imprisonment without Bail. 3 Jac. cap. 5.

9. Recusants and Sectaries which shall impugn the King's Authority, in Causes Ecclesiastical.

Where Bail is taken away.

10. Or that shall perswade others thereto, or from coming to Church, to that End and Purpose:

11. Or shall meet at any Conventicles, under Colour of any Exercise of Religion (contrary to his Majesty's Laws):

12. Or shall perswade any other to meet at any such Conventicles or Meetings.

Every Person which shall be lawfully convicted of any of these four Offences shall be committed to Prison, there to remain without Bail, until they conform themselves to come to Church, and make open Submission and Declaration of their said Conformity.

13. Persons absent from Church upon any Sunday, and not having whereon to be distrained for the Forfeiture, shall be committed until Payment be made thereof. See *antea tit. Recusants.*

Persons above the Age of sixteen Years, which shall absent themselves from the Church by the Space of one Month, and shall be thereof lawfully convicted, shall forfeit for every Month 20^l. And if he shall not be able, or shall fail to pay the same within three Months after Judgment thereof given, he shall be committed to Prison, there to remain until he hath paid the said Sum, or conform himself to go to Church, &c. 23 Eliz. 1. P. 1. 4.

So of such Persons as shall keep any School-masters, which shall absent themselves from the Church as aforesaid, or which shall not be allowed by the Ordinary; if such Persons shall not be able, or shall fail to pay the Penalty, (sc. 10^l. for every Month) within three Months, &c. he shall be committed without Bail, as aforesaid. *Ibid.*

Persons convicted for Reddition are notailable. *Merton, cap. 3. Fitz. 66. e.*

² H. 5. 8. *Rioters* attainted of great Riots, shall have one Year's Imprisonment, without Bail. *P. Riots* 11. *Rioters.*

All Persons convicted (by the View of the Justices, or upon their Inquiry, or otherwise) of any Riot, shall be committed until they have paid their Fine. See before, *Tit. Riots.*

³⁹ El. 4. *Rogues* incorrigible, committed to the Gaol or House of Correction, shall remain there until the next Quarter-Sessions. See *antea* *Tit. Rogues.* *Rogues.*

Servants. See *Labourers.*

Schoolmaster that is a Recusant.

²³ El. 1. ^{P. Recus.} 2. Or that is not allowed by the Ordinary, and being of either of the said Offences convicted, shall be imprisoned for one whole Year without Bail.

⁸ H. 6. 7. *Sheriffs* not making their Election of Knights for the Parliament in their full County, between the Hours of 8 and 11 in the Forenoon. *Sheriffs.*

²³ H. 6. 15. ^{P. Parl.} 4. 2. Or returning Knights for the Parliament contrary to the Statute, and being of either of the said Offences attainted before the Justices of Assize, they shall be imprisoned for one whole Year without Bail.

Sheriffs, Under-Sheriffs, or other Persons, making any Warrant for the Summons, arresting or attaching of any Person to appear in any Court, not having the original Process or Writ warranting the same, upon Examination or Proof thereof before the Judges of Assize, or Judges of the Court, &c. such Offenders and their Procurers shall be committed to the Gaol, there to remain without Bail, until they have paid (among them) 10*l.* to the Party grieved, and his Costs and Damages, and also 20*l.* apiece to the King. *43 El. c. 6.* *Where Bail is taken away.*

² E. 6. 2. *Souldiers*, who have purloined their Horses or Harnes, shall be committed without Bail, until they have satisfied the Party grieved, his Executors, or Administrators, for such Horse or Harnes. See before, *Tit. Souldier.* *Souldiers.*

⁴⁵ El. 2. *Stock of the Shire*: Refusers to pay their Rates thereto, and not having whereon to be distrained, &c. shall be committed till they have paid it. *Vide antea Tit. Stock.* *Stock of the Shire.*

Subsidy: If any Person assessed to the Subsidy shall not pay the same, by Reason whereof his Body shall be arrested upon a Precept directed out by the Commissioners of the same Subsidy, &c. he shall remain in Prison without Bail until he hath paid the said Sum wherewith he is chargeable; also for the Fees of such Arrest, &c. to him or them that shall execute such Precept 20*d.* See the *Statutes of Grants of Subsidies.*

²⁷ H. 8. 20. *Tithes*: The Defendant in a Suit for Tithes that disobeyeth the Judge's Sentence, shall be committed without Bail, until he shall find sufficient Sureties by Recognizance, &c. to obey and perform that Sentence. *Vide Tit. Tithes.* *Tithes.*

Transportation: The Masters or Mariners transporting any Corn, Beer, Herring, Whitage, or Wood, without Licence. *Transportation.*

^{P. Corn.} 1. 2. The Owners of such Things transporting more than they are licensed.

^{2, 3.} ^{1 & 2 P. &c.} 3. The Mariners carrying such Things into any Ship to be transported.

Every such Offender shall be imprisoned one whole Year without Bail; and yet see *antea*, *Tit. Transport.* that every Man may transport

port Corn without Licence, (or Danger, as it seems) it being at the Price there mentioned.

4. The Master or Mariners transporting or shipping to that Intent, ^{18 El. 2.} any Leather, Tallow, or Raw Hides, and being thereof convicted, ^{P. Leather 30.} shall have one Year's Imprisonment without Bail.

5. Transporters of live Sheep.

6. And every Person that shall bring, deliver, send, receive, take ^{8 Eliz. 2.} or procure any live Sheep to be conveyed out of any the King's Do-^{P. Sheep 1.} minions, their Aiders, Procurers and Comforters.

The Offenders in either of the former Cases, being thereof convicted, shall for the first Offence suffer one whole Year's Imprisonment without Bail.

7. The Master of any Ship permitting any Woman or Children ^{1 Jac. 4.} under 12 Years of Age to pass over the Seas without Licence, shall suffer 12 Months Imprisonment without Bail.

8. Aliens transporting Bows or Arrows. See *Aliens*.

If any Man shall transport or convey any Horse, Mare, or Gelding, out of *England* without Licence, &c. and be thereof lawfully convicted, he shall suffer Imprisonment by the Space of one whole Year. ^{1 E. 6. c. 5.}

Treason. *Treason:* Persons committed for *Treason* touching the King are *Where Bail is taken away.* not bailable. *West. 1. c. 15.*

Counterfeiters of Money, or of the King's Seal, are not bailable *West. 1. c. 15. Br. Mainp. 59.*

Vagabonds: See before *Rogues*.

Utlawed. *Utlawed Persons,* taken for the same, are not bailable. *West. 1. c. 15. & 26 H. 6. c. 10.*

Wards. *Wards:* By the Statute of *W. 2. c. 35.* if any Person shall ravish, (*sc.* shall take and carry away) any Ward, the Offender shall have two Years Imprisonment; and if he do not restore, or do marry the Child after the Years of Consent, and be not able to satisfy for the Marriage, he shall abjure the Realm, or have perpetual Imprisonment. And it is said, that it is at the Election of the Justices to award the Offender to abjure the Realm, or to have perpetual Imprisonment; and that if the Justices shall award him to perpetual Imprisonment, that the King cannot pardon him that Imprisonment, for that is in lieu of Damages to the Plaintiff, and that Imprisonment is an Execution thereof, the which the King cannot pardon without the Assent of the Party Plaintiff.

Wax. *Wax,* and Vessels of Honey; if any Person shall counterfeit any the ^{23 El. 8.} Marks thereof, or shall mark them with any other Man's Mark, and ^{P. Wax. 7.} shall be thereof convicted, he shall suffer three Months Imprisonment without Bail.

Weights. *Weights:* Falsifiers or Counterfeiters thereof, such Offenders (after ^{P. Just. of Peace 61.} they be indicted thereof) shall be taken and imprisoned without Bail, ^{P. weights 13.} until they be acquitted or attainted; and if they be attainted, they shall remain in Prison until they have made Fine and Ransom, according to the Justices Discretion. *9 H. 5. 8. Parl. 2. Quere* whether this Statute be now in Force.

Witches. *Witches,* Conjurers, Sorcerers, and such others, which shall take upon them to hurt any Persons in Body, though it be not effected:

2. Or shall take upon them to tell any Treasure or Goods, (lost or stolen) where it may be found:

3. Or shall take upon them to provoke any Person to Love:

4. Or

^{1 Jac. 21.}

P. Conj. 2. 4. Or shall hurt any Cattle or Goods thereby:
 4 P. & M. Every such Offender, being of any the said Offences lawfully con-
 c. 8. victed, shall have one whole Year's Imprisonment without Bail.

P. Wo- Women: Taking of Women (unmarried, and under the Age of 16
 men 7. Years) out of the Possession of their Parents, or other Person having
 lawfully the Keeping, &c. of them, and against their Wills, the Of-
 fender being thereof convicted, shall be two Years imprisoned without
 Bail, &c.

P. Wo- 2. Taking away and Deflowring such Maid or Woman Child, as a-
 men 8. forefaid:

3. Contracting of Marriage with such a Maid, against the Will of,
 or unknown of, or to the Father of such a Maid, (if he be living)
 or against the Will, &c. of the Mother, having the Custody and
 Governance of such Child:

The Offenders in these two last Cases, being thereof lawfully con-
 victed, shall have five Years Imprisonment without Bail, &c.

See more concerning Women, *antea Recusants*.

There be divers other Statutes made since the Publication of the
 Author, which take away Bail, but they being abridged in the first
 Part of this Book under their proper Titles, I forbear to repeat
 them.

C H A P. CLXVIII. *Vide* CXVII.

Recognizance.

A Recognizance is a Bond of Record, testifying the Recognizor to
 owe a certain Sum of Money to some other; and the Acknow-
 ledging of the same is to remain of Record; and none can take it but
 only a Judge or Officer of Record. § 1.

And these Recognizances, in some Cases, the Justices of Peace are
 inabled to take, by the exprefs Words of certain Statutes: But in o-
 ther Cases (as for the Peace and good Behaviour, and the like) it is
 rather in Congruity, than by any exprefs Authority given them, either
 by their Commission or by Statute.

Note, wheresoever any Statute giveth them Power to take a Bond
 of any Man, or to bind over any Man to appear at the Assizes or Ses-
 sions, &c. or to take Sureties for any Matter or Cause, they may take
 a Recognizance. Yea, wheresoever they have Authority given them
 to cause a Man to do a Thing, there it seemeth they have (in Con-
 gruity) Power given them to bind the Party by Recognizance to do
 it. And if the Party shall refuse to be bound, that then the Justice
 may send him to the Gaol; for it is a Rule in Law, *Concesso uno
 aliquo, etiam id concedi videtur sine quo prius concessum haberi ne-
 quit*. But yet inquire of this last Case, for there is also another Rule,
*In generali concessione non veniunt ea, quæ quis non esset verisimili-
 ter in specie concessurus*.

I will here set down only some particulars where the Justices of
 Peace (out of their Sessions) may take a Recognizance.

One Justice of Peace may take a Recognizance for the Peace.

Also one Justice of Peace may take a Recognizance for the Good
 Behaviour (by the Commission): And these the Justice of Peace may

Crom.
197.

See Fitz.
82.

Co. 11.
52. a.

take either upon Discretion, or upon Complaint made to him, or upon a *Supplicavit* delivered to him.

One Justice of Peace may bind by Recognizance such as do declare any Thing against a Felon, to appear at the Assizes or Sessions, there to give Evidence against the Offender: And so in divers other Cases.

One Justice of Peace may bind by Recognizance such as keep any common Houses or Places for unlawful Games, that they keep the same no longer. See *antea*, Tit. *Games*, &c.

And also such as play at unlawful Games, contrary to the Statute of 33 H. 8. cap. 9. that they use the same no more.

One Justice of Peace may bind over Persons suspected to use Logwood in Dying, and such as can discover the same. See *antea*, Tit. *Dying*.

One Justice may bind by Recognizance Takers of Partridges, &c. and Hawkers in Corn, to appear at next Sessions, to answer their said Offences. See *antea*, Tit. *Partridges*.

One Justice of Peace may bind by Recognizance any Persons convicted for taking or destroying any *Pheasants*, *Partridges*, *Fowl*, or *Hare*, that they offend not thereafter, in any the Particulars any more.

Also they use (by way of Prevention) to bind *Tramellers* for *Larks*, that they shall destroy no *Partridges*, &c. *Quere* of this, how it is warranted. See *postea*, Tit. *Warrants*.

But the Binding of *Tramellers* in this sort seemeth rather to do hurt than good, in that it doth enable to tolerate the Use of *Tramelling* in the Night-time, whereby many *Partridges* are secretly taken and killed; whereas any two Justices of Peace may more legally prevent that Night-taking and Destroying of *Partridges*, by taking away all such Nets, where they shall see Cause; the which they may do by Force of the Stat. 7 Jac. c. 11. which see here before, Tit. *Partridges*.

I have known fundry Proclamations, authorizing and commanding the Justices of Peace (at or before the Beginning of the Lent-time) to convene and call before them all Taverners, Inn-holders, Alehouse-keepers, Keepers of ordinary Tables, and other Victuallers within the Precinct and Rule of the said Justices; and to take Bonds (by Recognizance) with sufficient Sureties of every of them, and in good Sums of Money, to the King's Use, that they shall not dress any Flesh in their Houses in the Lent-time, for any Respect, nor suffer it to be eaten there.

One Justice of Peace may bind by Recognizance the Master that shall misuse his Apprentice, &c. to appear at the next Sessions, &c. See *antea*, Tit. *Apprentices*.

Two Justices, &c. may take Recognizance of Alehouse-keepers for keeping good Orders, &c. See before.

They may bind by Recognizance an Alehouse-keeper (committed for Victualling without Licence, that he shall keep no more an Alehouse. See *antea*, Tit. *Alehouses*.

Two Justices, &c. may bail Prisoners, and upon such Bailment they are to cause the Prisoners to find Sureties for their Appearance, &c. which must be done by their Recognizance. See here, Tit. *Bailment*.

They

They may bind the Overseers of Cloth by Recognizance, to see the Statute observed. See hereof *antea*, Tit. *Cloth*.

Also two Justices of Peace may bind by Recognizance the Defendant in a Suit of Tithes, to obey the Sentence of the Judge. See *antea*, Tit. *Tithes*.

Whether the Justices of Peace may bind an Offender against a penal Statute, to appear and answer his Fault at the Sessions; see hereof *postea*, Tit. *Warrants cap.* 128.

Note, That every Obligation and Recognizance taken by Justices of Peace must be made to the King, and shall be made by these Words, *Domino Regi*, upon Pain of Imprisonment of any Person that shall take it otherwise: And all such Bonds or Recognizances shall be in the Nature of a *Statute-Staple* to all Intents. See hereof *postea*, Tit. *Recognizance*. §. 3.
To whom,

A Justice of Peace can take no Recognizance, but only for such Matters as concern his Office. See hereof, Tit. *Surety for the Peace*, *antea*.

33H.8.39.
P. Ac. 1. Note also, That a Recognizance taken by a Justice of Peace is a Matter of Record presently, so soon as it is taken and acknowledged, although it be not made up, but only entred into his Books; nay, although it be not entred, as it seemeth. See *Stamf.* 77. a. & *Br. Record* 58. such a Matter.

If a Justice of Peace shall take a Recognizance where he hath no Authority, it seemeth void.

And these Recognizances taken by the Justices of Peace, are to be certified by them at their Quarter-Sessions: Except Recognizances taken of such as shall inform against Felons, and upon Bailment of Felons, which by Statute they are appointed to certify at their next General Gaol-delivery. See *antea*, Tit. *Felony*.

For the Forms of Recognizances see hereafter, Tit. *Recognizances*, *cap.* 134.

C H A P. CLXIX. *Vide CXVII.*

Warrants.

NOW concerning the Precepts or Warrants to be made by the Justices of Peace: §. 1.
By Parol.

Lam. 87. The Justice of Peace, (seeing that he is a Judge of Record) his Precept or Command by Word of Mouth (in some Cases) is as strong as his Precept in Writing.

14H.7.8,
9. And therefore the Justice of Peace, upon any Riot done in his Presence, may command the Rioters to be arrested, and cause them to find Sureties for their good Behaviour.

So upon an Affray, Assault, Threatning, or other Breach of the Peace done in his Presence, the Justice of Peace may command by Word, the Officer being present, or his own Servant, to arrest such Offenders to find Sureties for the Peace. See before, Tit. *Surety for the Peace*.

And where the Justice of Peace commandeth one being present to arrest another that is also in his Presence, though that Command

be

be by Word only, it is good, and it is reputed as an Arrest made by the Justice himself, he being present when the Arrest is made. *B.*

Faux Imprif. 33. See hic antea.

One in a False Imprisonment justified that the Plaintiff being in Presence of a Justice of Peace, the Justice not having Opportunity to examine him, commanded the Defendant to take him into Custody, and keep him safely until next Day, the which he being Constable did do; and this was holden a good Justification without shewing the Cause the Justice of Peace had to imprison him, and without shewing the Warrant, because it was done in the Presence of a Justice of Peace. *Broughton v. Mulsoe, T. 37. El.*

Moor's
Rep. p.
401.

But the Justices of Peace cannot command by Word to arrest another being out of their Presence; neither may one in the Absence of the Justice arrest another upon his Command by Parol, but it must be by a Precept or Warrant in Writing, by the greater Opinion of the Justices.

14 H. 7. 8.
Br. Peace
7.

And yet in Case of Rioters, the Justice of Peace may by Word command his Servants to arrest him, in the Absence of the Justice; by the Opinions of *Fineux* and *Tremble* Justices: See hereof *antea*, Tit. *Riots*.

14 H. 7. 9.
10.

§. 2.
By Writing.
The Form.

Next their Warrant or Precept by Writing ought to be under their Hand and Seal, or under their Hand at least. See *hic infra*.

And if it be for the *Peace or Good Behaviour*, or the like, where Sureties are to be found or required, there the Warrant ought to contain the *Special Cause* and Matter whereupon it is granted, to the Intent that the Party (upon whom it is to be served) may provide his Sureties ready, and take them with him to the Justice of Peace to be bound for him: But if the Warrant be for *Treason, Murder or Felony*, or other Capital Offence, or for great Conspiracies, Rebellious Assemblies, or the like, it needs not contain any special Cause, but there the Warrant of the Justice of Peace may be, to bring the Party before him, to make Answer to such Things or Matters generally as shall be objected against him on the King's Behalf: And this is now the common Usage, by the Report of Mr. *Crompton*.

Crompt.
148.

And I once received a Warrant, brought me by one *Thomas Evans*, (a Pursivant or Messenger of his Majesty's Chamber) under the Hand of the Right Honourable *Tho. Lord Ellesmere*, late Lord Chancellor of *England*, for the apprehending one *James Malin*, for a Matter of Contempt; and the said Warrant was in General Words, *scil.* to answer to such Matters as were objected against him, without any special Cause therein mentioned.

An. Dom.
1607.

Also I saw another Warrant granted under the Hand of *Popham* Chief Justice, to bring one *Edmonds* (of *Barnwel* by *Cambr.*) before him to answer to such Matters as he had to object against him on the King's Behalf, without any special Cause or Matter therein set down.

3 Jac.

The like Form you shall find in the Book of *Entries*, Tit. *Attachment*: *Non omittas, &c. quin attach, E. H. &c. ita quod habeas corpus ejus coram Justic. nostris ad Affissas in Com. tuo capiend. assign. apud W. in Octab. Sanct. Mich. ad respond. nobis de his que sibi ex parte nostra tunc ibidem objiciuntur, & ad faciendum ulterius & recipiend. quod Curia nostra de eo consider. in hac parte, &c.*

Blank
Warrant.

But it is not safe for a Justice of Peace to grant out his Warrant with a Blank: For about 30 *Eliz.* one wrote to Sir *L. R.* a Justice of Peace, to send him a Precept or Warrant with a Blank, that he

might

might put therein one whom he would attach upon Suspicion of Felony; and the Justice of Peace did so, (granting a Warrant with a Blank, where he neither knew the Party's Name nor the Matter): And for this the Justice was fined in the Star-Chamber, as Mr. *Crompton* reporteth. *Author des Courts*, 34.

Also the Warrant of the Justice of Peace should be under the Seal of the said Justice: For every Justice of Peace (being a Judge of Record) hath a Seal of his Office; and when he maketh a Warrant under his Seal to the Officer, then the Officer ought to give Credence to the Seal, for that is his Authority, *per Brudenel*. 14 H. 8. 16.

Again, the Warrant of the Justice of Peace is the better, if it bear Date of the Place where it was made, and it must express the Year and Day when it was made. See 21 H. 7. 22.

* A Justice of Peace who is dwelling out of the County granteth his Warrant to be served within the County; the Officer cannot carry the Party out of the County to the Justice of Peace who made the Warrant, but must carry him before some other Justice within the County.

Quare whether such a Warrant be good or no.

First, for that a Justice of Peace hath no Authority but in the County where he is a Justice, and in Commission. See *antea*.

And again, for the Date of the Place seemeth to be material by the Books 14 H. 8. aforesaid, & 21 H. 7. 22. *Ba. Ex. Imp.* 12.

The Justice of Peace may make his Warrant to bring the Party before himself, and then the Officer needs not to carry the Party before any other Justice. And yet upon a Warrant for the Peace granted *ex officio*, the usual Manner is otherwise. See *antea*, Tit. *Sureties for the Peace*.

Also the Justice of Peace may in some Cases make his Warrant to attach the Offender to be at the next Sessions of the Peace, there to answer his said Offence, &c. See *antea*, Tit. *Counterfeitsers*, & *postea Warrants*.

If a Justice of Peace shall make his Warrant to the Sheriff to attach one, and to bring him to the next Sessions, there to find Sureties for the Peace, &c. it is good. *Crompt.* 135, 136.

So if the Justice shall make his Warrant to warn a Man to appear at the next Sessions, there to give in Evidence for the King; and where the Justice shall command one by his Warrant to be or appear at the next Sessions, &c. if the Party do not appear, then from that Sessions there shall go out a Precept to attach him for such his Contempt. *Crompt.* 123.

A Justice of Peace (*ex officio* by the first Assign. in the Commission) may grant his Warrant to arrest or attach one that hath broken the Peace, or committed other Misdemeanour against the Peace, to find Sureties for the Peace or Good Behaviour, as the Cause shall require.

Also the Justices of Peace in divers Cases may grant their Warrant against a Man for his Neglect or other Default, as for refusing to pay *Town-Rates*, and the like: And such Warrant may be either to attach the Offender to be at the next Sessions, there to answer, &c. or else to bring him before the said Justice, or any other Justice, who, finding Cause, may bind him to appear at the next Sessions to answer the said Default.

Also

Also where any Statute doth give Authority to the Justices of Peace to cause another Person to do a Thing, there it seemeth they have Power given them (of Congruity) to grant their Warrant to bring such Persons before them, that so they may take Order therein. See *antea*, Tit. *Recognizance*.

§. 7.
Where not
before in-
dicted.

But I find it much controverted, whether a Justice of Peace may grant a Warrant to attach Persons suspected of Felony, or against Offenders upon a penal Statute, unless such Persons or Offenders be first thereof indicted: For that the Justice of Peace, as he is a Judge of Record, so it is said he must have a Record, whereupon he doth award his Process or Precept. But the Practice is now to grant a Warrant before the Party is indicted, and this is by Virtue, by the first *Assignavimus* in the Commission, and by the Statute of 5 *Ed.* 3. 14. that any one Justice of Peace may cause the Constables to arrest and imprison Offenders suspected of Felony, &c. and how shall the Justices of Peace cause this to be done, but by his Warrant or Command?

14H.8.16.
Br. Peace
6.
See Br.
Com. 3.

Again, if a Felony be done, there is no Doubt but that every private Man without a Warrant may arrest whomsoever he suspecteth of it, being a Man of evil Fame, &c. See hereof Tit. *Arrest*. But if the Offender being pursued shall resist, *quare* who shall be aiding to a private Man, whose Goods are stolen, and who suspected another to have stolen them, either to search for his Goods, or to apprehend the Party suspected, if the Justice of Peace (by his Warrant) shall not command the Constable to aid him therein? If it be objected, that the Constable may do all this of his own Authority, (upon Request to him made by the Party robbed); be it true; yet we find by common Experience that the Constables, without the Justice's Warrant, are very fearful and remiss herein, as neither knowing their own Authority, nor the Danger.

See *antea*
Tit. Ex-
am. & 2H.
7. 15, 16
pro &
contra.

Besides, this is no new Thing, for there is such a Precedent in the old Book of Justices of Peace, *impress.* 1561. fol. 41. a. yea, it is the common Practice at this Day, and it seemeth to be very serviceable; and of two Evils the less is to be chosen, *sc.* that an Offender or suspected Person, should be imprisoned for a Time, (though sometimes wrongfully) rather than one which hath committed Felony should escape unpunished.

Lam. 193.

And yet by the Opinion of the Court 14 *H.* 8. a Justice of Peace cannot make a Warrant to arrest a Felon, unless he be indicted of Felony, (or that the Justice himself hath Suspicion of the Felon). But if the Constable, or other Officer, shall serve such a Warrant, he shall justify the same, though the Justice did err in the awarding thereof. See 24 *E.* 3. 9.

14H.8.16
Br. Peace
6.
Br. Faux.
Imp. 889
Co. 10. 76.

Next, for the Justices of Peace to bind over, or to grant a Warrant against Offenders upon any penal Statute, to appear at the Sessions to answer to their Offence or Fault, though such Statute be within the Power of the Justice of Peace, yet such Warrant or Binding over of such Offenders may seem not warranted, unless it be specially so appointed in the Statute, as it is by the Statutes of 5 *El.* c. 4. 23 *El.* 10. 39 *El.* 11. 33 *H.* 8. 1. See *antea*, Tit. *Counterfeiters, Dying, Labourers and Sacraments*.

Lam. 191.
Cro. 197.
The In-
conveni-
ence
thereof.
See Lam.
197.

But such Offenders ought first to be indicted, and thereupon Process from the Sessions is to be awarded against them until they come in, &c.

No one or more Justices of Peace can make a Warrant upon a bare Surmise to break any Man's House to search for a Felon, or for stolen Goods; for they are constituted by Acts of Parliament, which Acts give them no such Authority. It would be inconvenient if they might so do. But if a Man be indicted for Felony, the Sheriff upon Process may demand him; and if he render not himself, may break the House. *Co. 4. Inst. p. 176.*

Cro. 238. And yet there are several Precedents of Attachments made from
Lamb. 91. one Justice of Peace against Labourers and Servants that shall refuse to serve, or that shall depart out of their Service, contrary to the Statute, to be before the Justices at their Sessions, to answer to their said Defaults. But these may seem also to have been warranted, and so appointed by the Statute of Labourers, made *An. 25. El. 3. c. 6.* which Statute is now repealed by the Statute of *El. 4.*

Also it is usual (by Way of Prevention) to bind by Recognizance such as do trammel for Larks, that they shall destroy no Partridges. And for these Purposes the Justices of Peace do grant out their Warrants to convene the said Persons before them, for Victuallers, (i.e. Taverniers, Inn-keepers, Alehouse-keepers, Keepers of ordinary Tables, and other Victuallers) I have known sundry Proclamations which seem to warrant the Justices of Peace therein. But for the other, what Law or Warrant there is for it I know not, until the Offender is convicted. See *hic Tit. Partridges.* Yet see *antea*, where the Justices may in some Cases grant their Warrants against Offenders upon penal Statutes. But there the Justices have Power to hear and determine out of the Sessions.

Also where the Offence prohibited by such a Statute amounteth to the Breach of the Peace or Good Behaviour, there the Justice may (either upon Discretion or Complaint of such an Offence and Breach of the Statute) grant out his Warrant, and bind over the Offender to the next Quarter Sessions, &c. to answer his said Default, and in the mean Time to be of the Good Behaviour. See *hic, Ser. vanti assaulting their Master.*

14 H. 8. 16 Br. Peace 6. The Justice of Peace may direct his Warrant to the Sheriff, Bailiff, Constable or other Officer, or to any other indifferent Person by Name, though he be no Officer, yea to any Person that he shall think meet; but yet the safest Way is to direct it to the Constable, or to some other sworn Officers.

A Warrant directed by the Justice of Peace to the Constable, or other sworn Officer, and to a Stranger, who is no Officer, and the Warrant is made *conjunctim & divisim*, and is delivered to the Stranger, who executeth it; all this is good.

Crompt. 147. A Warrant directed by the Justice of Peace to two Men jointly, to arrest another, &c. yet any one of them alone may do it.

A Warrant directed by the Justice of Peace to the Sheriff, he may by Word command his Under-Sheriff, Bailiff, or other known or sworn Officer, to serve it, without any Precept by Writing.

Lamb. 91. And so the Sheriff's Servant, or other Person by the Sheriff's Command, and as Servant to the Sheriff, may serve or execute such Warrant without any Precept by Writing. See *Br. Fe. Impr. 43. & Trespass 339.*

But if the Sheriff will command another Man (that is a Stranger) to serve it, he must deliver him a Precept in Writing; otherwise a Writ of False Imprisonment will lie for the Arrest.

Et cetera

A Warrant directed by the Justice of Peace to the Sheriff, Bailiff, or to the Constable, or to the Justice's Servant, or to a Stranger, to arrest one, or such Person (to whom the Warrant is made) must serve it himself, for these can command none other to do it neither by Word nor Writing, nor make any Deputy. 3 E. 4. 14.
14 H. 7. 9.
20 H. 7. 13.
21 H. 7. 24.
Co. 9. 69.

§. 8. The Officer to whom any Warrant shall be directed and delivered, ought with all Speed and Secrecy to find out the Party, and then to execute the said Warrant. And yet there are several Proceedings of this kind before them for Vice and other Crimes.

A sworn and known Officer (be he Sheriff, Under-Sheriff, Bailiff, or Constable, &c.) needs not show his Warrant to a Man whom he cometh to serve it upon, although he demandeth it: But if the Justice will direct his Warrant to his Servant or to another (who is no sworn Officer) to serve it, they must show their Warrant to the Party if he demand it, or otherwise the Party may make Resistance, and needs not to obey it. Br. (En. Impr.) 23.

But a sworn and known Officer, if he will not show his Warrant to the Party, yet he ought (upon the Arrest) to declare the Contents of his Warrant. Co. 6. 34.
& 9. 68.

And an Officer giveth sufficient Notice what he is, when he saith to the Party, *I arrest you in the King's Name*, &c. and in such Case the Party at his Peril ought to obey him, though he knoweth him not to be an Officer; and if he have no lawful Warrant, the Party grieved may have his Action of False Imprisonment against him. Co. 9. 69.

If an Officer do arrest a Man for the Peace, or the like, before he hath any Warrant, and then afterwards doth procure a Warrant, (or a Warrant cometh after to him) to arrest the Party for the same Cause, yet the first Arrest was wrongful, and the Officer is subject to an Action of False Imprisonment: See the Stat. 43 Ed. 1. c. 16. Dyer 244.
R. Bar. 248.
Lam. 93.

Where there be two or three known by the Name of *J. S. of D. Yeoman*, and upon a Warrant (or other Process) granted out against one of them, another of them is arrested, an Action of False Imprisonment will not lie against the Officer for this, for he is not bound at his Peril to take Notice which of them is the Offender, &c. And perhaps no particular Offence is mentioned in the Warrant. Id. 2. H. 8. 12.
H. 8. 12.
H. 8. 12.

Where a Warrant is granted out against *J. N. the Son of M. N.* and the Officer arresteth *J. N. the Son of T. N.* although in Truth he be the same Person that offended, and against whom the Complaint was made, yet this Arrest is tortious, and the Officer subject to an Action of False Imprisonment: See the like Matter, *10 B. 4. f. 10. B. 4. Faux Imp. 38.*

§. 9. The Officer upon any Warrant from a Justice either for the Peace, or Good Behaviour, or in any other Case where the King is a Party, may by Force break open a Man's House, to arrest the Offender, &c. See hereof *ante*, in the former Title, *Forcible Entry*. q. m. 2. 141.

If any Officer or other Person hath arrested a Man by Virtue of his Warrant, which he hath from a Justice of Peace, and then taketh his Promise that he will come again to him such a Day, to go to the Justice with him according to his Warrant, (and so letteth the Party go) who comes not again at the Day appointed, the Officer cannot after arrest or take him again by Force of his former Warrant; for that this was by the Consent of the Officer: But if the Party arrested had escaped (of his own Wrong) without the Consent of the Officer, now upon fresh Suit the Officer may take him again and again, so often See Cro. 214. 4. 8.
145.
Co. 144.
38.

as he escapeth, although he were out of View, or that he shall fly into another Town or County. See more *postea*, Tit. *Imprisonment*, & *L. 5 E. 4. fol. 12. Br. Faux Imp.* 18.

Where an Officer hath received a Warrant, he is bound to pursue the Effect of it in every Behalf, or otherwise his Warrant will not excuse him of that which he hath done. See *antea*, Tit. *Surety for the Peace*.

21 H. 7. 39 If an Officer, having a lawful Warrant to arrest another, shall be resisted or assaulted by the Party, or by any other Person, then may that Officer justify the Beating or Hurting of such Persons; and other Persons (upon his Prayer) may and ought to aid the Officer. § 10. *Resistant.*

14 H. 8. 16 If a Justice of Peace shall make any Warrant for a Matter where-
Br. Faux. in he hath Jurisdiction, although it be beyond his Authority, yet it is not disputable by the Constable, or other such Officer, but must be obeyed and executed by the Officer; as if the Justice of Peace shall make his Warrant to arrest one for the Peace or Good Behaviour, &c. without Cause, the Officer shall not be punished for executing this: But if a Justice of Peace shall make his Warrant to do a Thing out of his Jurisdiction, or in a Cause whereof the Justice of Peace is no Judge, if the Officer shall execute such a Warrant, here he is punishable; for the Officer is not bound to obey him who is not Judge of the Cause, no more than a meer Stranger: And so note, That the Officer is bound to take Notice of the Authority and Jurisdiction of the Judge. See such a Matter, 22 *Ass.* 64. *Plow.* 394. *b. Cro.* 106. *Officer not to question the Warrant.*

Imp. 8. Lamb. 67. 94
Co. 10. 76. Crom. 74. If any Man shall abuse the Justice of Peace his Warrant, as by casting of it into the Dirt, or treading it under his Feet, &c. he may be bound to his Good Behaviour, and may also be indicted and fined, for it is the King's Process. § 11. *Contempt.*

Crom. 149. When any Person cometh before a Justice of Peace, by Force of any Warrant for the Peace, Good Behaviour, or for a Riot, or the like, the Party must offer Sureties, or else the Justice may commit him. See *antea*, Tit. *Sureties for the Peace*.

If a Justice of Peace shall grant his Warrant to one to apprehend another for Murder, Robbery or Felony, it shall be safe for the Justice upon the Delivery of his said Warrant, to take (upon Oath) the Examination of the said Party that requireth the Warrant, or at least to bind him over by Recognizance to give Evidence at the next Gaol-delivery, &c. against the Offender, least that afterwards when the Offender shall be brought (by the Officer) before the Justice upon his said Warrant, or else happen to yield himself to the said Justice, then the Party that procured the Warrant be gone: For by credible Report I am informed, That one having procured a Warrant from a Justice of Peace in *Suff.* against another for a Robbery done upon the Highway, and the Justice upon the Delivery of his Warrant not having bound over the Complainant to give Evidence, nor taken his Examination, as aforesaid, that at the next Assizes and Gaol-delivery, the Party charged with the Robbery came and offered himself to the said Justice of Peace, who immediately acquainted Sir *Tho. Flemming* (then Lord Chief Justice, and Judge of Assizes there) with the whole Matter; but the said Judge much blamed the said Justice of Peace for not having bound over the said Complainant at the first when he granted him the Warrant, and charged the said Justice of Peace, at his Peril, presently to send for the

the Party Complainant to come to give Evidence, &c. and farther directed the said Justice of Peace to bind over the Party charged with good Sureties for his Attendance and Appearance.

C H A P. CLXX. Vide CXVIII.

Arrest and Imprisonment.

§. 1.
What.

AN *Arrest* is the Apprehending and Restraining of a Man's Person, and may be called the Beginning of Imprisonment.

Imprisonment is where a Man is arrested against his Will, or is restrained of his Liberty, by putting him into the Gaol, Cage or Stocks, or into some Houses, or otherwise by keeping him in the High Street, or open Field, so as he cannot freely go at Liberty, when and whither he would.

If the *Constable* or other *Officer* (upon a Warrant received from a Justice of Peace) shall come unto the Party, and require or command him to go or come before the Justice, &c. this is no Arrest or Imprisonment. And upon a Warrant for the Peace, the Officer ought first to require the Party to go before the Justice before he may arrest him. See hereof *antea*, Tit. *Surety for the Peace*.

A Bailiff or Sheriff says to a Man being present, I arrest you; although he touch him not: This is a good Arrest, and if the Party go away it is a Rescue. 8 Car. B. R. *Sir James Wingfield's Case*.

But this Arrest (being in Execution of the Command of some Court, or of some Officer of Justice) is expressed in their Writs, Precepts or Warrants, by these Words or the like. *sc. Capias, Attachies, &c. to attach, arrest, take, bring or convey, or cause to be attached or arrested, &c.* all which Words do imply the Taking or Laying hold of the Person.

§. 2.
What Persons.

To this Arrest all Lay Persons (under the Degree of Barons or Peers of the Realm) are subject, and that by Warrant from the Justices of Peace, as you may see here before, Tit. *Surety for the Peace*.

But the Justices of Peace are not to grant their Warrants for the Peace, or the like, against any Nobleman. And yet if a *Capias* or Attachment shall be awarded against a Baron or Peer of the Realm from the King's Justices at *West.* for a Contempt, or in Case of Debt or Trespass, the Officer without any Offence of Law may execute the same, for that the Officer is not to dispute the Authority of the Court.

Ecclesiastical Persons.

Ecclesiastical Persons may also be arrested, and that by Warrant from the Justices of Peace, in some Cases. See hereof, Tit. *Surety for the Peace*. See P. Arrest 1.

Feme Covert.

A *Woman Covert* may be imprisoned by the Justice of Peace for a Force or a Riot committed by her. See *antea*, Tit. *Forcible Entry, and Riots*.

But otherwise of *Infants* in such Cases. See *Ibid*.

Yet if an *Infant cannot find Sureties for the Peace*, being demand-^{Infant}ed against him, he shall be committed until he hath found Sureties. See *antea*.

An *Infant*, (though of Years of Discretion, yet he) shall suffer no Imprisonment, nor other corporal Pain, for any Offence committed or done by him against any Statute, except an Infant be expressed by Name in the Statute. *Br. Imprif.* 101. *Covert* 68. *Plo.* 364. *Dott. & Stud.* 147, 148.

Co. 9. 56. The Liberty of a Man is a Thing specially favoured by the Common Law; and therefore if any the King's Subjects shall imprison another without sufficient Warrant, the Party grieved may have his ^{§. 3. For what Cause, and by whom.} Action, and shall recover Damages against the other; and the King also shall have a Fine of him. For Imprisonment of another without Offence of the Law, is one of the King's Royal Prerogatives, and only annexed to the Crown.

P. Accus. 1. ^{§. 3. c. 9.} Also by the Statute *Magna Charta*, made 9 H. 3. c. 29. no Freeman shall be taken or imprisoned, &c. but by the lawful Judgment of his Equals, (*sc.* upon his Conviction (for some Offence) by the Verdict of a Jury of 12 good and lawful Men) or by the Law of the Realm. See *Petition Anno 3 Caroli Regis*, & *Stat.* 5 Ed. 3. cap. 9.

Co. 10. 74. And by the Statute of *Magna Charta*, every Arrest or Imprisonment, and every Oppression against the Law of the Land, is forbidden; and if any Judge, Officer, or other Person, against the Law, shall usurp any Jurisdiction, and by Colour thereof shall arrest, imprison or oppress any Man, it is punishable by the Statute. See Co. 10. 75.

This Grand Charter is a Declaration of the antient Common ^{Magna Charta confirmed.} Law. Co. 10. 48. And the Statute of *Magna Charta*, & *Charta Foreste*, for their Excellency have since been confirmed by the Authority of above 30 several Parliaments. See Co. *Preface* to the 8th Report.

Note, That all Jurisdiction ought to be either by Charter or Prescription. Co. 11. 99. ^{§. 4. Jurisdiction.}

Also by the Statutes of 25 E. 3. c. 4. 28 E. 3. c. 3. & 42 E. 3. c. 3. no Person shall be *taken or imprisoned*, nor put to answer, unless it be by *Indictment* or *Presentment* (of a Jury) before Justices, or by Matter of Record, or by due Process made by Writ Original at the Common Law. See *P. Accusation* 1. & 42 Aff. 5. And *Br. Faux Imprif.* 30. 2 H. 4. the Body of a Man shall not be taken but by Process out of a Court of Record.

A Commission to arrest or take a Man (and his Goods) was holden to be against Law, for that this ought to be either upon Indictment, or Suit of the Party, or other due Process of Law. *Br.* 15, 16. & *Faux Imprif.* 9. & *Indictment* 38. 42 Aff. 5. 12. 24 E. 3. 9. Co. 5. 64. *Et les Commissioners de Oyer & Terminer poent prendre tiel Commission del party, & rem. ceo al Counsel le Roy, car est encontre Ley.*

And so note, that no Man shall be arrested for Debt, Detinue, Trespass, or other Cause of Action, but only by Virtue of a Precept or Command out of some Court of Record.

Neither shall any Man commit another to Prison, except he is a Judge of Record. Co. 10. 103.

But

But yet for *Misdemeanours done against the King's Peace*, (as for ^{See Co. 3.} *Treason, Felony, or breaking of the Peace, &c.*) the Offenders as well ^{11. 2.} by the *Common Law*, as by *divers Statutes*, may be arrested and imprisoned by the Officers of Justice, and sometimes by *private Persons* (as hereunder followeth) without either *Presentment, Process, Precept, Warrant*, or other Command. And these being by the Law of the Realm, are warranted by the aforesaid Statute of *Magna Charta*.

And Mr. *Bracton* (l. 5. in fine) saith thus; *In criminalibus causis, ubi sequi debet capitale iudicium, vita viz. vel mutilatio membrorum, non sequitur Attachiammentum aliquod, sed corpus tale (quicumque fuerit ille) ab omnibus arrestatur qui sunt ad fidem Domini Regis, sive inde Præceptum habuerint, sive non habuerint.*

And yet you must observe, that for arresting the Body of a Man in such Cases there must be some *just Cause*, or some lawful and just *Suspicion* at the least. And therefore where a Man is *indicted of Felony*, that is a good Cause to arrest him. But if an *Appeal of Felony* be commenced against another, that is no sufficient Cause, for it is but private Suspicion, &c.

Also every private Man may arrest another, whom he knoweth or ^{10 E. 4. 17.} seeth to have committed a Robbery, Manslaughter, or other Felony, and may deliver him to the Constable of the Town where such an Offender is apprehended, or in the Constable's Absence may imprison and set him in the Stocks; and if there be no Stocks there, ^{it Fitz. Bar. 101.} it seemeth he may carry the Offender to the next Town, and deliver him to the Constable there. See 9 E. 4. 28. or else he may carry him before a Justice of Peace, by him to be examined and sent to the Gaol, there to abide until the next Assizes, or Sessions of the Peace, &c.

Also when a Felony is committed, every Man may arrest suspicious Persons that be of evil Fame, &c. and if such Person shall make Resistance, the other may justify to beat him.

But for the Arresting of such suspicious Persons, note, that there must be some Felony committed indeed.

Also the Party that shall arrest such suspected Person must have ^{9 E. 4. 28.} a Suspicion of him himself, and for the same Felony, or otherwise Suspicion generally is no Cause to arrest another. See *antea*, Tit. *Examination*. 5 H. 7. 4. & *Lib. Intr. Faux Imprif. div. 5.*

So that when any Felony is done, every Man that shall suspect another to be guilty thereof may arrest him. See 5 H. 7. 4. b. *Br. Faux Imprif. 16.*

Any Man suspecting another of a Felony committed, or only intended, may arrest him, so as thereupon he commits him to the Gaol, or carries him before a Justice of Peace. 9 E. 4. 26. 20 E. 4. 6. *Vide Finch 127.*

Also when a Felony is committed, the common Voice and Fame that *I. S.* did the Felony, is sufficient Cause for any Man to suspect him, and to arrest him. *Ibid.*

Also Hue and Cry after *I. S.* for Felony seemeth to be sufficient Cause to arrest him, though there be no Felony committed. *Ibid.*

Also Hue and Cry is sufficient Cause to arrest any suspicious Person. *Br. Faux Imprif. 25.*

So when a Felony is done, to be in Company of the Offenders is sufficient Cause to arrest him.

So to live idly and vagrant. *Br. Faux Imprif. 22. See antea.*

9 E. 4. 28. Also every Man may arrest such as apparently go about to commit any Felony, and may imprison them. *Finch* 127. b. one nonnullimo

29 E. 3. 39. Also upon Hue and Cry for stolen Goods, (sc. for a Horse or Bullock, &c. of such Colour, &c.) if A. be taken driving or leading, &c. such a Horse, or such a Bullock, or having such other stolen Goods about him, though he be a Man of good Name and Credit, yet every Man may apprehend and stay A. hereupon, and may deliver him to the Constables, by them to be set in the Stocks, or safely kept, until they carry him before a Justice of Peace, that so he may be delivered by Course of Law. *H. 7. 28.*

If any Man shall be dangerously hurt in Affray, (or otherwise) every Man may arrest and imprison the Offender, &c. What every private Man may further do in Affray, see before, *Tit. Affray.*

Unlawful Hunters in Parks, the Keepers, or their Servants, may for such Offence justify to arrest the Offenders, and to cause them to depart, &c. *Lib. Inn. tit. Faux Impr. diol. 12.* *Justification.*

Every Man knowing of any that keepeth or useth any Gun, &c. contrary to the Statute, may arrest him, and bring him to the next Justice of Peace, &c. *Securanea, tit. Guns.*

9 E. 6. 3. b. Night-walkers, being Strangers or suspected Persons, Watchmen may arrest them, and may stay them till the Morning, &c. See hereof *Tit. Watch antea.* Yea, every Man may arrest such Night-walkers, for it is for the good of the Kingdom. *H. 7. 18. Bri. Faux Impr. 15.* See the Statute of *Winchester* 13 E. 1. & 4 H. 7. *fin. 6* 15 H. 7. *f. 15.*

But in all these Cases before, where a private Man shall arrest another, he ought thereupon to commit the Prisoner to the Gaol, or to carry and deliver him to the Constable, or to some other Officer, &c. See *20 E. 4. 6. Finch* 127. b. *fin. 12.*

The Sheriff, Bailiff, Constables and other the King's Officers may arrest and imprison Offenders in all Cases where a private Person may, and without any Writ or Warrant. *fin. 12.*

Where a Constable may arrest one, &c. See hereof *antea, tit. Constabularies of the Peace, Affray, forcible Entry, and Examination.*

A Constable, being informed of a lewd Man and Woman that are together in Incontinency, may take with him so many of his Neighbours as he will to arrest the said Man and Woman, to find Sureties for their Good Behaviour. *H. 7. 27. H. 7. 10.*

If any Man makes an Assault upon the Constable, he may justify to arrest him that makes the Assault, and to carry him to the Gaol for the Breach of the Peace, although the Constable be the Party upon whom the Assault was made. *fin. 12. 20 E. 4. 6. 1.*

The Justice of Peace may arrest and imprison Offenders in all Cases where a private Man may. See *hio antea.*

The Justice of Peace (upon his own Motion and Discretion, or upon Complaint) may also grant out his Warrant for the Arresting (or conveying before him) of all such Persons as shall break, or go about to break the Peace, or as he shall suspect to be inclined to break the Peace, and may commit them to Prison, if they shall refuse to find, or cannot find Sureties to keep the Peace.

The Justice of Peace (in divers Cases) may in like Sort grant out his Warrant for the Good Behaviour against Offenders (as you may see before) and may commit them to Prison for not finding Sureties accordingly.

And

And these Things the Justice of Peace may do by Force of the Commission, and of the Statutes 18 E. 3. c. 2. & 34 E. 3. c. 1.

If one cometh before the Justice of Peace upon his Warrant for the Peace, Good Behaviour, or for a Riot, or the like, the Justice needeth not to demand Sureties of him, but may commit him if he do not offer it. *Br. Peace* 7.

Also the Justices of Peace upon their own View, &c. of the Offence, may imprison the Offender against divers penal Laws; as namely such as keep common Alehouses without Licence, Offenders for unlawful Games, Rioters, such as shall make any Forcible Entries or Holdings of Possessions, &c. See for these before under their particular Titles.

There be divers other Offences which by the Statute are committed to the Justices of Peace (out of their Sessions) to hear and determine, and of which the Offenders shall be convicted, sometimes upon their own Confession before the Justices, and sometimes upon Examination and Proof of Witnesses; in all which Cases the said Justices of Peace may convene the said Offenders before them (by their Process or Warrant), and after such Examination and Conviction, they may imprison or otherwise punish the Offenders, according as they are limited by the said Statutes. See before.

Wheresoever the Justice hath Authority given him by any Statute to bind over any Man, or cause him to do any Thing, if such Person (being in his Presence) shall refuse to be bound, or to do such Thing, the Justice may send him to the Gaol, there to remain till he shall perform the same. See hereof *antea*, tit. *Recognizance*.

Break open an House. In what Cases the King's Officer may break open a Man's House for to arrest an Offender. See hereof, tit. *Forcible Entry*.

All Men being required ought to assist the King's Officers, to pursue and arrest Offenders against the Peace, &c.

§. 8. *Resist.* If the Party against whom any lawful Warrant is granted shall make Resistance, or shall make an Assault upon the Officer, or shall fly; the Officer may justify the Beating and Hurting of him, and may also imprison him in the Stocks for the same; but if the Party resisteth or flieth before he be arrested, the Officer cannot justify the Beating of him. 2 Ed. 4. 7. a. *Br. Trespass* 296.

If the Warrant was to arrest one who is indicted of Felony, then may the Officer justify the Killing of such a Person, if he shall resist or fly, or that he cannot otherwise be taken. See *hic ante*, *Homicide tolerated*.

§. 9. *Gaols. Imprisonment. The Place.* None shall be imprisoned by any Justice of Peace, but only in the common Gaol, by the Statute of 5 H. 4. & 23 H. 8. cap. 2. *SH. 4. 101. P. Prison*

And therefore Justices of Peace cannot commit Felons to any of the Counters in London, nor to other Prisons which be not common Gaols; nor make a Gaol of their own Houses. *Co. 6. 119. b.*

And yet Justices of Peace may commit to the Stocks some Offenders against certain Penal Statutes; as Townsmen tippling in Alehouses, &c. See hereof *antea*, tit. *Alehouses*.
Persons refusing to work in Hay and Harvest-time. See *antea*, tit. *Labourers*.

And in some Cases the Justice may commit an Offender to safe Custody by his Discretion. *Vide ante*, tit. *Preachers*.

Also in some Cases the Justices may send Offenders to the House of Correction, there to be continued for any reasonable Time, at the Discretion of the Justice. *Vide antea, tit. Rogues.*

Lamb.
136.
Crompt.
169. The Sheriff or Gaoler may imprison a Felon or other Prisoner in their own House, or in the common Gaol, at their Pleasure. *Tamen quare & vide Crompt. 184.* that the Gaol is the King's Prison, and that for Causes touching the King Offenders shall be sent thither.

10 E. 4. 6.
11 E. 4. 35.
3 H. 4. 9. The Constable (or other such Officer) cannot imprison any Man in his House, but in the Stocks; and that not above such a reasonable Time, as he may provide convenient Aid safely to convey the Prisoner to the Justice or Gaol. *Finch.*

And yet in Case of an Affray, &c. the Constable may for a Time imprison the Offender, being a Man of Quality, in the Constable's own House, or may commit him to some other safe Custody. *Vide hic cap. 1.*

If a Man commit Felony in one County, and be arrested for the same in another County, he shall be imprisoned in that County where he is taken. *Vide antea, tit. Felony, & 11 E. 4. Br. Faux Imprif. 25.* §. 10. County

13 E. 4. 9. The Justice of Peace, Constable, or other Officer, pursuing a Felon into another County, takes him there; the Felon shall be committed to the Gaol of the County where he was taken: For the Justice of Peace or Officer, being out of his County, hath no more Authority than a private Man. *Vide antea, tit. Accessories & Felony, Br. Fresh Suit 3. & Plover. 37. a.*

Also if the Constable (or other Officer) shall see an Affray, and he coming to arrest them, the Affrayers do fly into another County, the Officer (as every other private Person) may pursue them into the other County, and may arrest them there; but the Officer cannot bring them out of that County, but must carry the Affrayers before some Justice of Peace of the same County where they were taken, &c. But if the Affray be in one Town, and the Affrayers do fly into another Town, or into a Franchise or Liberty within the same County, the Officer may pursue them, and take them out of the Franchise, &c. by fresh Suit. *Vide antea, tit. Affray.*

Sw 2 E. 4.
6.
Br. Tresp.
196. But if the Constable hath arrested one upon a Warrant from a Justice of Peace, and after the Arrest the Party escapeth (of his own Wrong), and flieth into another County, the Constable may pursue and take him in the other County by fresh Suit, and bring him before the Justice of Peace upon whose Warrant he was first arrested. See *Crompt. 172, 173. & antea, tit. Felony by Statute.*

If a Prisoner taken in Execution shall make an Escape of his own Wrong, and shall fly out of Sight, and into another County, where the Sheriff hath no Power, yet the Sheriff, &c. upon fresh Suit, may take him again in any other County, and he shall be still said to be in Execution; yea, without fresh Suit, the Sheriff, &c. may take him again, and keep him until he hath agreed with him: Otherwise, if the Escape were by the Consent of the Sheriff, &c. *Co. 3. 52. Br. Escape 4. 12.*

3 Jac. c. 10.
P. Prif. 7.
8. Now for the Conveying of Prisoners to the Gaol, it must be at the proper Charge of the Prisoners, if they have Means or Ability there- to, otherwise it must be at the Charge of the Town where they are taken. 21 Jac. c. 28. & 3 Caroli 4. confirmed. §. 11. Charges

F f f f

And

‘ And if the Prisoner shall refuse to bear the Charge, the Justice, by his Warrant under his Hand and Seal, may cause the *High Constable of the Hundred, or Petty Constable of the Town*, where he hath any Goods, to sell so much thereof as will satisfy the Charges; and if the Prisoner have no Goods known, then the Parishioners of the Town, where he was apprehended, refusing to pay their Rate towards that Charge, may by like Warrant be distrained to pay the same. *Vide Stat. 3 Jac. cap. 10.*

And if a Man be arrested for Felony, and the Constable shall carry him to the Gaol, and the Gaoler will not receive him, the Constable must bring him back to the Town where he was taken, and that Town shall be charged with the Keeping of him until the next Gaol-delivery, by the Opinion in the Book 10 H. 4. or the Constable or other Party that arrested him may in such a Case keep the Prisoner in his own House. See 1 E. 4. *Br. Faux Imprisonment* 25. *fine.*

But the Gaoler denying to receive a Felon by the Delivery of any Constable or Township, or taking any Thing for receiving such, shall be punished for the same by the Justices of Gaol-delivery. *P. Prif. 6. E. 3. c. 10.*

§ 12. When a Statute doth appoint Imprisonment, but limits no Time when the Offender shall be imprisoned, then he is to be imprisoned presently; as in Case of a Force, the Justices of Peace, upon View thereof, ought to commit the Offenders presently, for after they may not commit them. *Co. 8. 119. Pl. 17. b.*

Also when a Statute doth appoint Imprisonment, but limits no Time how long, in such Case the Prisoner must remain at the Discretion of the Court. *Cromp. 171.*

Where a Statute doth ordain that an Offender shall be imprisoned at the King's Pleasure. *Vide antea, tit. Bailment.*

Where a Statute ordaineth that a Prisoner shall not be delivered without the King's special Command, and that upon a Fine to be made to the King; who may assess the same Fine, and deliver him. See 18 H. 8. 1.

But Imprisonment to be inflicted by the Justice of Peace, almost in all Cases, (except for the Peace, the Good Behaviour, or for Felony, or higher Offences) is but to retain the Party until he hath made Fine to the King for Contempt or Offence; and therefore if he shall offer to pay his Fine, or shall find Sureties by Recognizance to pay it, he ought to be delivered presently. *2 Mar. 1. Br. Impr. 100. Co. 11. 43.*

§ 13. Now for the Manner of Imprisonment, it seemeth generally in all Cases where a Man is committed to Prison, especially if it be for Felony, or upon an Execution, (or but for a Trespass, or other Offence) every Gaoler ought to keep such Prisoner *in salva & arcta custodia: Salva, sc.* that he ought to be imprisoned so surely as that he cannot escape; *Arcta*, in respect that he ought to be kept close, without Conference with others, or Intelligence of Things abroad. *Co. 8. 100. & 6. 87.*

And therefore if the Gaoler shall licence his Prisoner to go abroad for a Time, and then to come again, or to go abroad with a Keeper, though he come again; yet these are Escapes: And if the Prisoner were in for Felony, this is fineable in the Gaoler at least, and so it is if it be not Felony; and if the Prisoner were in upon an Execution, this is so penal to the Officer, as that he shall be charged for the Debt; and if the Prisoner were in but for a Trespass, yet the Officer is fineable: For Imprisonment was ordained for Punishment of Offenders, *1 R. 2. c. 12. H. 4. c. 4. and*

and in Terror of all others; *ut pana ad paucos, metus ad omnes perveniat. Vide antea tit. Felony by Statute.*

And yet see *Co. L. 260.* That Imprisonment must be *Custodia, & non pana*: For *Carcer ad homines custodiendos, non ad puniendos, dari debet*: But 'tis just that it should be *pana* as well as *custodia*, *sc.* for Malefactors, that it should be a Punishment to them, and a Terror to others; and for Debtors, that they may the sooner pay, their Creditors.

' For, as one saith, *Maxima illecebra peccandi impunitatis spes*, A great impulsive Cause of Offence is the Hope to escape unpunished: And so a great Cause that Debtors care not to pay their Creditors, is their Hope to escape Imprisonment, or of too much Favour and Liberty in Prison.

Dyer 149. Co. 3. 44. Also (by the Law) those which are in Execution ought not to go at Liberty within the Prison, nor abroad with their Keeper, *24 H. 8.* much less in Cases of Felony, or of higher Offences.

Co. ibid. P. Accom. 2. Fitz. 93. h. Also by the Statute of *Westm. 2. c. 11.* Accountants, and such as are in Execution, the Sheriff or Gaoler may put Irons or Fetters upon them: And yet if the Gaoler shall imprison a Man so straightly, by putting him in the Stocks, or putting more Irons upon him than is needful, or keepeth his Victual from him, whereby the Prisoner becometh decrepit, lamed, or otherwise diseased, he shall have an Action of the Case against the Gaoler; and if the Gaoler shall keep his Prisoner more straight than of Right he ought to do, so that the Prisoner dieth thereof, this is Felony in the Gaoler. *Hic verbo Gaoler.*

Also the Constable or such other Officer, that shall imprison in the Stocks any Offender for Felony or Suspicion thereof, may lock the Stocks, and, if need be, may also put Irons on him; and when he conveyeth him to the Gaol, or to the Justice, may pinion him, or otherwise make him sure, so that he cannot escape.

Kil. 69. It seemeth by *Britton, fol. 17.* that by the Common Law (before the Statute of *Westm. 2.*) none should have Irons put on them but such Offenders as were taken for Felony, or Trespassers in Parks. But the Words of the Statute of *Westm. 2. cap. 11.* are general, *quod carceri mancipentur in ferris*; which Word *Carceri* seemeth to signify any Persons imprisoned for any Cause, (or any Persons worthy of the Prison) and is not to be restrained to Accountants only. See *Coke 3. 44.*

7 Jac. 4. Also by the Statute 7 *Jacobi Regis*, all Rogues, Vagabonds, sturdy Beggars, and other idle and disorderly Persons, sent to the House of Correction, may (by the Master of such a House) be punished by putting Fetters or Givies upon them.

22 & 23 Car. 2. cap. 20. A Person under Arrest must not be carried to a Victualling-house without his Consent, so as to charge him with any Sum of Money for Meat or Drink, nor more to be taken for an Arrest than required by Law; nor any Reward exacted for Keeping him out of Gaol till he find Bail or agree, or take more for a Night's Lodging, or other Expences, than what shall be allowed by the next Justice, or by the Sessions.

C H A P. CLXXI. *Vide CXIX.*

Posse Comitatus.

§. 1.
Who.

W Here the Justice of Peace, Sheriff, or other Officer, is enabled ^{Lamb. 38.} to take the Power of the County, it seemeth they may command, and ought to have the Aid and Attendance of all *Knights, Gentlemen, Yeomen, Husbandmen, Labourers, Tradesmen, Servants and Apprentices*, and of all other Persons being about the Age of *fifteen Years*, and able to travel.

But Women, Ecclesiastical Persons, and such as be decrepit or diseased, shall not be compelled to attend them.

And in such Cases it is referred to the Discretion of the Justice of Peace (or Sheriff, &c.) what Number they will have to attend on them, and how and after what Manner they shall be armed, or otherwise furnished.

But it is not justifiable for the Justice of Peace, Sheriff, or other Officer, to assemble *Posse Comitatus*, or raise a Power or Assembly of People (upon their own Heads) without just Cause. *Vide antea, tit. Riots.*

C H A P. CLXXII. *Vide CXX.**What Persons may take Posse Comitatus, and in what Cases.*

§. 1.

A NY Justice of Peace or Sheriff, may take (of that County where ^{And. part} he is a Justice or Sheriff) any Number that he shall think ^{2. p. 67.} meet to pursue, apprehend, arrest and imprison *Traitors, Murderers, Robbers and other Felons*; or such as do break, or go about to break, or disturb the King's Peace: And every Man (being required) ought to assist and aid them. *Vide antea, tit. Forcible Entry and Felony.*

The Justice of Peace (and Sheriff or Under-Sheriff) may take the *Posse Comitatus* for suppressing Riots; and all Sorts of Persons (being able and required) ought to assist them therein. *Vide antea, tit. Riots.* ^{14 H. 7. 8.}

Yea, any Justice of Peace may take the Power and Aid of the County to suppress *Rioters*, and need not to stay for the Coming of another Justice, or of the Sheriff.

§. 2.
In what Cases.

Also in Cases of *Forcible Entry*, any Justice of Peace may take *Posse Comitatus* to remove such Persons as by his View, or by Inquisition taken before him, shall be found to have made any Forcible Entry (into other Mens Possessions) or to detain them with Force. *Vide antea, tit. Forcible Entry.*

Also the Sheriff, or other Officer, upon any lawful Warrant for the ^{P. Rec. 52.} Apprehending any Popish Recusants, &c. may take the *Posse Comitatus*, &c. See the Statute of 3 Jac. 4.

The Sheriff, Under-Sheriff or Bailiff, &c. (if need be) may by the ^{3 H. 7. 1.} Common Law take the Power of the County (what Number they ^{10.} shall think good) to execute the King's Process or Writ, be it a ^{Co. 5. 115.} ^{P. Distr. 4.} ^{P. Retor.}

Writ 5.

Br. Fin. P. Writ of Execution, *Replevin, Estrepement, Capias*, or other Writ, it being the King's Command. See also the Statute *Westm. 1. 17. Westminst. 2. 39.*

And such as shall not assist them therein (being required) shall pay a Fine to the King. See *hic antea*.

^{2 H. 7. 1.} ^{Br. Tref.} ^{166. &} ^{Riots 2.} The Sheriff's Bailiff, to execute a Replevy, took with him Three hundred Men armed (*modo guerrino, &c.*) with Guns; and it was holden lawful: For the Sheriff's Officer hath Power to take Assistance as well as the Sheriff himself, for that is all one Office, and one Authority.

A Man demands the Peace in the Chancery against a *great Lord*, and hath *Supplicavit* directed to the Sheriff: There, if need shall be, the Sheriff may take *Posse Comitatus* to aid him to arrest such a Lord, &c. *Vide antea, tit. Surety for the Peace.*

So if a *Supplicavit* be directed to a Justice of Peace, he or the Officer to whom the Justice of Peace shall make his Warrant in this Behalf, (upon Resistance made) may (if need be) take the *Posse Comitatus* to aid him to arrest the Party: *Quia quando aliquid mandatur, mandatur & omne per quod pervenitur ad illud. Co. 5. 115.*

But every Sheriff is inabled besides by his Writ of Assistance, whereby there is Command (under the Great Seal) to all *Archbishops, Dukes, Earls, Barons*, and all other the King's Subjects within the same County, to be aiding to him in whatsoever belongeth to his Office, &c.

The Sheriff may take the *Posse Comitatus* to apprehend *Felons, &c.* or disturbers of the Peace. *Vide antea, tit. Forcible Entry.*

So he may take the *Posse Comitatus* to execute the *Precept of the Justice of Peace. Ibid.*

^{5 H. 7. 10.} ^{13 H. 7. 10.} ^{Br. Tresp.} ^{432.} The Constable (of a Town) upon a *Felony* committed, or upon any *Affray*, or the like, may take the Aid of his Neighbours, or other Persons being present, to apprehend the Felons, or to cause the Peace to be kept, and to carry the Offenders before the Justice, &c. See *Br. Riot. 3.*

One hath hurt another, whereby he is in Peril of Death, the Constable may take Power or Aid to arrest him, &c.

So may the Constable take the Aid of his Neighbours for executing the Justice's Warrant directed to him.

^{18 E. 3. 8.} Yea all and every such Persons as are *Conservators of the Peace* by the Common Law, (*sc. every Petty Constable, High Constable, Coroner, Sheriff, Steward of a Leet, or of a Court of Piepowders, Steward of the Sheriff's Torn, and other Judge in any Court of Record*) may Command and take the Help, Aid and Force of others, to arrest all such who in their Presence, and within their Jurisdiction, shall go about to break the Peace by Word or Deed.

^{Co. 11. 82.} ^{21 H. 7. 39.} Every Man may assemble his Friends and Neighbours to defend his Person, &c. (being in his House) against Violence, &c. but not to go abroad with him to a Fair or Market, &c. *Vide antea, tit. Forcible Entry.*

C H A P. CLXXIII. *Vide CXX.**Certain Advices to the Justices of Peace.*

THIS being such a Form of subordinate Government for the Quiet of the Realm, as no Part of the Christian World hath the like, as saith my Lord Coke, 4 *Inst.* 170. if the same be duly executed; much of the Happiness of this Nation depends on our Justices of the Peace well and faithful Discharge of their Duty; and their due or ill Administration of the Authority given them, must needs add to the Reputation of our Government, or the Defamation thereof, especially since their Authority is so much enlarged by several Statutes: It will concern them therefore for their Direction and Security, to peruse the Statute 4 *H.* 7. 12. where they may find their Duty to give just Relief, and the Danger of Neglect. And therefore I thought it not amiss here shortly to admonish the Justices of Peace again of some few Things mentioned before, for their better Memory.

Oath of Office.

1. First, That they exercise not the Office of a Justice of Peace before they have taken the *Oath of their Office*, and the *Oath of Supremacy*. *Vide antea*, cap. 4.

Not to be Judges in their own Case.

2. That they execute not this their Office *in their own Case*, but Crom. f. 68. Lit. 212. Co. L. 141. cause the Offenders to be convened or carried before some other Justice, or desire the *Aid of some other Justice* being present; *quia iniquum est aliquem sua rei esse judicem*. Coke 8. 118. And some late Statutes have taken special Care to prevent this, as you may see *hic Tit. Trespass, &c.*

Besides, *idem non potest esse agens & patiens*, 14 *H.* 8. 13. And when 9 *H.* 6. 21. 11 *H.* 6. 49. a Man is a Party, he cannot be a Judge indifferent, 8 *H.* 6. 19. *Auxy ad estre sovent view, que Justice de Peace que ad execute ceo Office en son Case demesne, ad estre puny pur ceo in Camera Stellata*. *Crompt.* 68.

Riots.

3. That they be careful for the Execution of the Statute of Riots. *Vide antea*, Tit. Riots.

And that neither in the Case of Riots, or any Part of their Office they meddle (if they can avoid it) where any *Relation* is concerned, for it brings a Suspicion upon their Proceedings; but if they must needs meddle (as it is not always in their Choice, that they carry themselves uprightly herein: For one *Carew* (a Justice of Peace of *Devon*) was censured, he going to view a Riot, and the Rioters being escaped before his Coming, he refused to go to the Place where they were, although but a little way off; and the Peace being required against them, he took Recognizances to keep the Peace against others that demanded it not, and granted *Supersedeas*, and procured the Peace to be released the next Day. And all this in Favour of his Brother.

If upon their Inquiry of a Riot the Truth cannot be found, by Reason of any Maintenance, &c. that they certify the same within one Month. *Ibid.*

Forcible Entry.

4. That upon *Forcible Entry* they make no *Restitution* without Enquiry. *Vide antea*, Tit. *Forcible Entry*.

Treason.

5. That upon Notice of any *Treason*, or of any Seminaries, &c. or of any *Agnus Dei*, &c. offered, they discover the same to some of the Privy Council. *Vide Tit. Treason.*

6. That

6. That they be circumspect in bailing of Prisoners, *viz.* that they Bail neither deny it to such as are bailable, nor yield it where it is not grantable. *Vide hic Bailment.*

7. If any Felony be committed, and one is brought before a Justice of Peace upon Suspicion for the same, though it shall appear to the Justice that the Prisoner is not guilty of that Offence, or that it is not Felony of Death, yet he may not set him at Liberty, but so as he may come to his Trial. *Vide antea Tit. Felony by the Statute, and Evidence against Felons.*

8. That all Recognizances taken by them be in the King's Name. *Recognizances.*

9. That all Recognizances taken by them be certified at their next Quarter-Sessions, or Gaol-Delivery, according as the Case shall require.

10. That they meet at every Easter-Sessions at the least. *Vide 5 Easter-Eliz. cap. 4. P. Just. 67.* And yet their Presence and Attendance at every general Sessions is very requisite.

11. That their Examinations taken concerning the Mis-entring of Plaints in County Courts, or the Defaults of gathering the Shire A-merciaments, be certified into the Exchequer, &c. *Vide antea, Tit. Sheriffs.*

12. That such Offences as the Surveyors of Highways shall present to them, they again present at their next Quarter-Sessions. *Vide antea, Tit. Highways.*

13. That the Oaths, taken by them upon the Submission of any Recusant, be certified at their next Quarter-Sessions. *Vide antea, Tit. Recusants.*

14. Also that they do Justice, and give Remedy to every Party *To do Justice* griev'd in any Thing that lieth within their Power to hear, determine, or execute, and that without Respect of Persons, and according to the Laws and Statutes of this Realm. *Vide antea, cap. 4.*

15. He must suffer the Law to have its Course, and not privately stay Proceedings, contrary to the Duty of his Place. *Latch 48.*

16. Where they have Jurisdiction by any Statute, which at first was Temporary, they are to consider whether the same be continued or made perpetual, and so be not expired. *To consider such Statutes which are in Force.*

Note, that all these former Matters are penal to the Justices of Peace, if they shall offend in any of them, and therefore it is likely they will be the more careful therein. But there are certain other Things principally tending to the publick good, and lately commenced from his Majesty (by the Judges of Assize) to the Care of the Justices of Peace; in all which they are to imploy their special Care and Diligence: And they are shortly these ten Articles following.

1. Alehouses; the Abuses there to be reformed, and such as be unlicensed to be suppressed. *Alehouses.*

2. Highways and Bridges to be amended. *Highways.*

3. Hue and Cry and fresh Sute to be duly made and pursued after Robbers and other Felons. *Hue and Cry.*

4. Labourers, *sc.* idle Persons meet to serve, to be compelled to go to Service. *Labourers.*

5. Poor, their Children to be placed Apprentices; such as are able of Body, to be holden or set to Work. *Poor Apprentices.*

6. Recusants: First, Popish Recusants, (especially such as have been reconciled to the Pope, or drawn to the Popish Religion since the Gunpowder-Treason, for these are by His Majesty accounted most dangerous)

gerous) that these be certified into the King's Bench, and farther to be dealt withal (by the Justices of Peace) according to the several Statutes in that Behalf made.

Also negligent Recusants, which shall not resort every Sunday to Church, that such be punished according to the Statute. For the first and best Means to bring Men to God, is to bring them to Church.

Rogues
and Vaga-
bonds.
Houses of
Correc-
tion.
Watch.
Weights.

7. Rogues and Vagabonds are to be duly punished.

8. Houses of Correction to be maintained.

9. Watch to be duly kept.

10. Weights and Measures, the Abuses therein to be reformed.

Farther, the Justices of Peace are to be careful that they suffer not any Thing to the Disdvantage of the King, where it lieth lawfully in their Power to prevent it. *Vide Lamb. 521.*

Also that they remember not to exercise the Judgments of Men only, but of God himself, (whose Power they do participate, and who is always present with them) and therefore must take heed that in all their Actions they set God before their Eyes.

But since most of the Business of the Justices of Peace (out of Sessions) consisteth in the Execution of divers Statutes committed to their Charge, which Statutes cannot be sufficiently abridged, but that they will come short of the Substance and Body thereof; therefore it shall be safest for the Justice of Peace not to rely over much upon these short Collections thereof, but to have an Eye to the *Abridgment of Statutes*, or rather to the *Book of Statutes at large*, and thereby to take their farther and better Directions for their whole Proceedings: For (as Sir *Ed. Coke* observeth) Abridgments are of good and necessary Use to serve as Tables, but not to ground any Opinion, much less to proceed judicially upon them. *Ideo* (saith he) *tutius est petere fontes quam sectari rivulos*, *Coke 10. 117.*

And lastly, for the better Encouragement of Justices of Peace, Constables, and other Officers, (and of all others who in their Aid, or Assistance, or by their Command shall do any Thing touching his or their Office) who (by causeless Suits commenced by contentious Persons against them for executing their Offices) have lately been discouraged from doing their Offices (with that Courage, Care, and Diligence which is required at their Hands) now for their Ease in pleading, they are by the Statute 7 & 21 *Jacobi* allowed to plead the general Issue of Not guilty, and give the special Matter in Evidence, and for their wrongful Vexation double Costs. And for all Actions, &c. to be brought against any Justice of Peace, or other Officer, (or other Person which in their Aid, &c. shall do any Thing concerning their Office) the said Action, &c. shall be laid within the County where the Fact shall be done, and not elsewhere, &c. 21 *Jac. Reg. cap. 12.*

7 Jac. c. 5.
21 Jac. 12.
3 Car. c. 1.

*Et nota, quicquid Justic. fecerit de Recordo ignoranter, & pro defectu scientie, non erit pro eo punitus: Nec pro re per ipsum facta judicialiter, 2 R. 3. fol. 10. Mes les Justices d'Assize poient oyer & punier les defaults de Justices de Peace, sc. leur contempts, omissions, negligences, favours, affections, corruptions, & autres defaults que-
cunque.*

And lastly, where a Justice makes a Conviction in a summary way 1 *Salk.* a Summons is necessary, and therefore upon Complaint made, the Justice must summon the Party to appear, and if he makes Default, 41. *Mod. Ca.* then he may proceed.

C H A P. CLXXIV. *Vide* CXXI.*Warrants and Precedents.*

THE Warrants of the Justice of Peace may be stiled and made §. 1.
after divers Manners. As.

1. First in the Name of the King; and yet the *Teste* may be under the Name of the Justice (or Justices) of Peace, that grant them out.

2. Or they may be stiled and made only in the Names of the Justices.

3. Or they may be made without any such Style, and only under the *Teste* of the Justice of Peace, or only subscribed by the Justice, as followeth,

In the King's Majesty's Name.

Cambr. **G**EORGE, by the Grace of God, King, &c. To our Sheriff The Style
of our County of *Cambridge*, the High Constables of the Hundred of *Redfield*, the petty Constables of the Town of *Balsbam*, and to all and singular our Bailiffs and other Ministers in the said County, as well within Liberties as without, Greeting. Forasmuch as *A. B.* of, &c. hath come before Sir *E. P.* Knight and Baronet, one of our Justices of Peace within the said County, and hath, &c. (concluding it in the Justice's Name, as thus) Witness the said *E. P.* The Tiste
at *Isleham*, the Day of *Oct.*

Note, That wheresoever the Warrant is made in the King's Name, §. 2.
(as before) there it ought to be directed to all Ministers as well with- Direction
in Liberties as without, for that the King is made a Party: And so it may be done in all other Warrants, (especially for Felony, or for the Peace, or the Good Behaviour, &c.) because it is the Service of the King; and no Liberty or Franchise shall be allowed, or hold Place against the King. *Br. Franch.* 31. Yet see before, that the Justices of Peace of the County may not intermeddle in any City, Town, or Liberty, which have their proper Justices. *Hic. cap.* 6.

Or thus in the Name of the Justice himself.

Cambr. **M**ILES Sandys, Knight and Baronet, one of the Justices of the Peace of our Sovereign Lord the King, within the said County, to the Sheriff of the said County, to the Bailiff or Constables of the Hundred of, &c. to the petty Constables of the Town of *P.* within the said Hundred, and to all other the Ministers and Officers, of our Sovereign Lord within the said County, and to every of them, Greeting. Forasmuch as, &c. Given under my Hand and Seal, at the Day of *Oct.*

Or they may be directed to any of these Officers (above named) particularly, or else to any other indifferent Person or Persons as followeth.

Christophorus Hatton, Miles & Baronettus, unus Custodum Pacis Dom. Regis in Com. Cantabr', Vic' ejusdem, vel Ballivo itineranti ejusdem Com. vel Ballivo Hundred' de R. & Ch. in Com. pred' vel B. C. & D. E. Constabul' Hundred' de W. vel Constab. (generally) Hundred' or Villa de H. salutem: Vel F. G. & H. I. Constabul. Villa de H. & eorum cuilibet, salutem: vel sic, Dilectis sibi K. L. & M. N. & eorum cuilibet, conjunctim & divisim, salutem, &c.

A Warrant for the Peace

Cambr.

A Warrant for the Peace.

GEORGE, by the Grace of God, &c. To our Sheriff, &c. Forasmuch as *A. B.* of, &c. Yeoman, hath personally come before Sir *J. C.* Baronet, one of our Justices of the Peace within the said County, and hath taken a corporal Oath, that he is afraid that one *C. D.* of *F.* in the said County, Yeoman, will *beat (wound, *Any one of these Causes is sufficient. maim, or kill him, or burn his Houses;) and hath prayed Surety of the Peace against the said *C. D.* therefore we command and charge you jointly and severally, that (immediately upon the Receipt hereof) you cause the said *C. D.* to come before the said Sir *J. C.* or some other of our Justices of the same County, to find sufficient Surety, as well for his Appearance at the next Quarter-Sessions of our Peace, to be holden at the Castle of *Cambridge*, or elsewhere, for or in the said County, as also for our Peace to be kept towards us and all our Liege People, and chiefly towards the said *A. B.* that is to say, that he the said *C. D.* shall not do, nor by any Means procure or Cause to be done, any of the said Evils to any of the said People, and especially to the said *A. B.* And if the said *C. D.* shall refuse thus to do, that then immediately (without expecting any farther Warrant) you him safely convey, or cause him to be conveyed safely, to our next Prison in the said County, there to remain until he shall willingly do the same: (So that he may be before our said Justices, at the said next general Sessions of the Peace to be holden at *Cambridge* aforesaid, then and there to answer unto us for his Contempt in this Behalf.) And see that you certifie your Doings in the Premises to our said Justices at the said Sessions, bringing then thither this Precept with you. Witness the said *J. C.* at *S.* aforesaid, the fourth Day of *August*, &c.

Or thus, in the Name of the Justice himself, mutatis mutandis.

Cambr.

Thomas Jermyn Knight, one of the Justices of the Peace of our For the Sovereign Lord the King within the said County; to the Sheriff, Peace. &c. Greeting. Forasmuch as *A. B.* &c. hath personally come before me, and hath taken a corporal Oath, &c. *ut supra.* These shall be therefore on the Behalf, and in the Name of our Sovereign Lord, to command you jointly, &c. that you cause the said *C.* to come before me, or some other of his Majesty's said Justices of Peace, in the said County, &c. *ut supra.* Given under my Seal at aforesaid, &c.

Or

Or thus.

Quia A. B. coram me sacramentum prestitit corporale, quod ipse sibi metuit dampnum de corpore suo per J. S. de facili posse venire. Or thus; quod ipse de vita sua per J. S. graviter & manifeste comminat. Or thus; quod ipse metuit de vita sua, sive de mutilatione membrorum suorum, sive de incendiis domorum suarum per J. S. &c.

Another for the Peace.

To the Constables of, &c. And to either of them.

Cambr.

See before Tit. Arrest.

WHereas *B. A.* the Wife of *W. A.* of your said Town, Labourer, hath required Sureties of the Peace against *T. B.* of your said Town, Butcher, and withal hath taken her corporal Oath before me, that she required the same not for any private Malice, Hatred, or ill Will, but that she is afraid of her Life, (or the Hurting or Maiming of her Body, or the Burning of her Houses,) These are therefore to require you, and in his Majesty's Name to charge and command you, that immediately upon Sight hereof, you, or any of you, require the said *T. B.* to come before me, or some other of his Majesty's Justices within the said County, to find sufficient Sureties, as well for his Appearance at the next general Quarter-Sessions of the Peace to be holden for this County, as also that the said *T. B.* shall in the mean Time keep his Majesty's Peace, as well towards his said Majesty, as towards all his Liege People, and especially towards the said *A. B.* And if he shall refuse so to do, that then immediately you do convey the said *T. B.* or cause him to be conveyed unto the Common Gaol at the Castle of *Cambridge*, there to remain until he shall willingly do the same. And see that you certifie your Doings in the Premises to the Justices at the said Sessions; and have you there this Warrant, dated at, &c.

Or thus.

WHereas *B.* the Wife of *W. A.* of your said Town hath personally come before me (*I. C.* Knight, one of the Justices of the Peace for the said County of *C.*) and hath taken her corporal Oath, that one *T. B.* of your Town hath already assaulted, beaten and bruised her the said *B.* and farther hath *threatned* her in such Sort, that she is afraid that the said *T. B.* will beat, wound, maim or kill her, or do her some other bodily Harm; and thereupon she the said *B.* hath prayed Security of the Peace to be had or granted to her against the said *T. B.* These are therefore to will and require you, (*&c. ut supra*) to find sufficient Sureties (or to be bound with two sufficient Sureties) for his Personal Appearance at the next general Quarter-Sessions of the Peace to be holden for this County, then and there to answer the Premises; and in the mean Time that he the said *T. B.* keep the Peace towards our said Sovereign Lord the King, and all other his Liege People, and especially towards the said *B.* And if he shall refuse thus to do, that then (*ut supra*.)

G g g g 2

A War-

A Warrant for the Peace upon a Supplicavit.

Cambr.

Christophorus Hatton Knight, one of the Justices of the Peace within the County of *Cambridge*, to the Sheriff of the said County, the High Constables of the Hundred of *R.* the petty Constables of the Town of *B.* and to all and singular the King's Bailiffs and other Ministers, as well within Liberties as without in the said County, and to every of them, Greeting. Know ye, that I have received the Command (or Writ) of our said Sovereign Lord (in these Words, reciting the whole Writ of *Supplicavit*; or only reciting the Effect of the *Supplicavit*, thus, to compel *A. B.* of, &c. to find sufficient Surety for the Peace, by him to be kept towards, &c.) And therefore on the Behalf of our said Sovereign Lord, I command and charge you, jointly and severally, that immediately upon the Receipt hereof you Cause the said *A. B.* to come before me at my House in *Chevely*, to find sufficient Surety for the Peace, to be kept towards our said Sovereign Lord, and all his Liege People, and especially towards the said *C. D.* and if the said *A. B.* shall refuse thus to do, that then you him safely convey, or cause to be safely conveyed, to his Majesty's Gaol at the Castle of *Cambridge*, (or to the next Gaol of his Majesty in the said County) there to remain until that he shall willingly do the same; so that he may be before the Justices of the Peace of our said Sovereign Lord within the said County, at the next general Sessions of the Peace, to be holden for the said County, there to answer to our said Sovereign Lord for his Contempt in this Behalf. And see that you certify your Doings in the Premises to the said Justices at the said Sessions, bringing then thither this Precept with you. Given at *aforsaid*, under my Hand and Seal, the fourth Day of, &c.

The Return of this Writ, and Certificate of the Justices Doings herein, see here before in the Title of *Surety for the Peace*.

A Warrant for the Good Behaviour.

Cambr.

For the
Good Behaviour.

Whereas *A. B.* of your said Town is not of good Name or Fame, Any one nor of honest Conversation, (but an evil Doer, a Rioter, of these is sufficient, or Barreter, and Disturber of the Peace, of our said Sovereign Lord) as we are given to understand by the Complaint of sundry credible Persons: Therefore on the Behalf of our Sovereign Lord we command you, and every of you, that immediately, &c. you cause the said *A. B.* to come before us, or some other of our Fellow-Justices, to find sufficient Surety, as well for his good Behaviour towards our said Sovereign Lord and all his Liege People, until the next Quarter-Sessions of the Peace to be holden in the said County, as also for his Appearance then and there. And if he shall refuse so to do, that then, &c. (as in the Warrant for the Peace.)

Or thus.

Cambr.

Whereas we have been credibly informed that *S. W.* of your Town, &c. is a Man of evil Behaviour, one that daily moveth Discord, Strife, and Dissension among his Neighbours, and a common Disturber of his Majesty's Peace: These are therefore in the King's Name to command you, &c.

A general Warrant for a Misdemeanour.

Cambr. **T** *Thomas Chichely* Esq; one of the Justices, &c. To the Constables ^{Misde-}
 of, &c. and to every of them. These are to will and require meanour.
 you, and in his Majesty's Name to charge and command you, and
 either of you, that immediately upon the Sight hereof, (or upon *Mon-*
day next by Eight of the Clock in the Forenoon) you bring *I. H.* of
 your said Town, Butcher, before me, to answer to such Matters of
 Misdemeanour as on his Majesty's Behalf shall be objected against him.
 And hereof fail you not at your Perils. Dated at, &c.

Another for Misdemeanour.

Cambr. **T** Hese are to will and require you, &c. that immediately upon
 the Receipt hereof, you apprehend and take *A. B.* and *C. D.* &c.
 (or all and every the Persons here-under named) and to bring them
 forthwith before me, to answer unto such Matters of Misdemeanours
 as on his Majesty's Behalf shall be objected against them. And hereof
 fail you not at your Perils. Dated, &c.

To attach one for Felony.

Cambr. **W** Hereas Complaint hath been made unto me by *C. D.* of, ^{For Felony.}
 &c. that of late he hath had certain Goods feloniously taken
 from him, and that he hath in Suspicion one *R. G.* of your said Town:
 These are therefore to will and require you, &c. presently upon the
 Receipt hereof, to apprehend the said *R. G.* and to bring him before
 me, to answer to the Premises. And hereof fail you not at your Pe-
 rils. Dated, &c.

‘ Upon a Complaint to a Justice of Peace of a Robbery committed,
 ‘ he cannot issue out his Warrant to arrest all Parties suspected, but
 ‘ must specify them, as was resolved *Pasch. 24 Car. 1.* in Evidence
 ‘ in *Mr. Swallow's Case.*

Another.

Cambr. **T** Hese are to will and require you, &c. presently upon the Receipt
 hereof, to apprehend *A. B.* of, &c. and bring him before me, to
 answer unto such Matters of *Suspicion of Felony* as on his Majesty's Be-
 half shall be objected against him. And hereof fail you not at your
 Perils. Dated, &c.

Another.

T Hese are to will and require you, &c. to apprehend, &c. to an-
 swer unto the felonious Taking of certain Goods, wherewith he
 is charged by *J. S.* And hereof fail you not, &c.

To search for stolen Goods.

Cambr. **W** Hereas Complaint hath been made unto me by *N. O.* that of ^{To search}
 late he hath had feloniously taken from him certain Goods, ^{for stolen}
 and that he hath in Suspicion divers lewd and evil-disposed Persons ^{Goods.}
 within

within your Parish: These are to will, &c. that immediately upon the Receipt hereof you make diligent *Search in all and every such suspected Houses* and Places within your Parish, as you and this Complainant shall think convenient: And if upon your Search you find any of the said Goods, or other just Cause of Suspicion, that then you bring all such suspected Persons as you shall find, before me, to answer unto the Premises. And hereof fail you not, &c.

Another.

Cambr.

WHereas Complaint hath been made unto me *Robert Hatton*, Knight, one of the Justices, &c. by *J. S.* of, &c. that upon *Monday* Night last he had feloniously taken from him certain Goods [they would be named] and that he is informed, that there are divers Parcels of such Goods in the Hands or Houses of certain suspected Persons within your Town: These are to will, &c. that you be aiding to and assist the said *J. S.* (the Bearer hereof) whereby he may come to the Sight of the same Goods, that so he may the better know whether those Goods, or any Part of them, are his; and if he shall find the same Goods, or any of them, that were stolen from him; or if he shall claim any of the said Goods in the Possession of any of the said suspected Persons, that then you do presently apprehend all such suspected Persons within whose Custody, House or Possession, you or he the said *J. S.* shall so find the same, and them (together with the said Goods) forthwith bring before me, or some other of his Majesty's Justices of Peace for this County, to make Answer thereto. And hereof fail you not, &c. Dated, &c.

To bind Men to give in Evidence.

Cambr.
To give
Evidence.

THese are in his Majesty's Name to charge and command you, &c. that presently upon the Sight hereof, you, or some of you, do cause to come before me, (or some other of his Majesty's Justices of Peace of this County) the Persons here-under named, to the End that they and every of them may be bound to make their personal Appearance at the next general Gaol-delivery, (or Quarter-Sessions) to be holden for this County, then and there to testify their and every of their Knowledges concerning certain felonious Acts committed by one *A. B.* now a Prisoner in the Castle of *C.* &c. And hereof fail you not, &c.

A Warrant for a Search after a Robbery committed, directed to the High Constables.

WHereas there have been many Robberies lately committed about, &c. Now for the better Discovery thereof, We whose Names are here under written, being his Majesty's Justices of Peace (for the County of *Cambridge*) have thought good, and do hereby will and require you in his Majesty's Name, forthwith to direct your Precepts to every Petty Constable within your several Hundreds, (commanding them) to search in all Inns, Alehouses, and other suspected Houses within your Precincts, for all such Persons as are out of Service; as also for all idle, vagrant or wandering Rogues, Beggars, or other Persons: And farther, That they the said Petty

Constables within your Precincts do take Examination and Account of all those, and such other Persons as are common Alehouse-haunters, or which spend their Money in *Riot*, or which do not labour for their Living, and have not whereon to maintain them. And that the same Searches be holden all over in your Hundreds in one Night, and at such other several Times as to your Discretion shall seem meet. And if any such Persons shall be found in the same Searches, and that upon your or the Petty Constable's Examination taken of them, or any of them, there shall be found any Cause of Suspicion in them, or any of them, that then they bring the same Persons so suspected before us, or some one of us, or some other of the Justices of Peace of this County, to be farther examined in the said Causes, and to be farther dealt withal according to Law and Justice. And for the better Doing hereof we require you to command in his Majesty's Name, that every Petty Constable within their Precinct do require (and charge) two chief discreet Headboroughs in every Parish to assist them the Petty Constables in this Service. And hereof fail you not.

A Hue and Cry after Robbery, &c.

To all Constables and other his Majesty's Officers, as well within the County of Cambridge, as elsewhere within the Realm of England.

WHereas Complaint hath been made unto me *M. D. Vice-Chancellor* of the University of *Cambridge*, one of his Majesty's Justices of Peace within the said County of *Cambridge*, by *I. S. of, &c. Husbandman*, that upon *Tuesday* at Night last (being the 15th Day of this instant *November*) he was robbed of certain Linen taken out of his House, with some other Things, and that he hath manifest Cause of Suspicion of one *A. B.* a lewd Rogue, (here describe his Personage and Apparel :) These are to require you, and every of you, to search within your several Precincts for the said *A. B.* and also to make Hue and Cry after him from Town to Town, and from County to County, and that as well by Horse-men as Foot-men: And if you shall find him the said *A. B.* that then you carry him before some one of the Justices of Peace within the County where he shall be taken, by him to be dealt withal according to Law, &c.

They would be named.

A Warrant for one who hath dangerously hurt another.

Cambr.

WHereas I am credibly informed that *I. B.* of your Town, *Blacksmith*, hath lately and dangerously hurt one *T. G.* of your said Town, Husbandman, by a Blow which he hath given the said *T.* on the Face, and another on the Back, so as the said *T.* is in Danger of Death thereby: These are therefore in his Majesty's Name to charge and command you, that immediately upon the Sight hereof, you, or any of you, do bring the said *I. B.* before me, or some other of his Majesty's Justices of the Peace of this County, to find sufficient Sureties, as well for his Appearance before his Majesty's Justices at the next general Gaol-delivery to be holden for this County, then and there to answer unto the Premises, and to do and receive that which by the Court shall be enjoined him: As also that the said *I. B.* shall in the mean Time keep the Peace towards his Majesty and

Hurting and Wounding.

all

all his Liege People, and especially towards the said T. G. And hereof fail you not at your Perils. Dated, &c.

For the reputed Father of a Bastard-Child.

Cambr.
Bastard-
Child.

WHereas Complaint hath been made unto me H. B. Serjeant at Law, one of his Majesty's Justices, &c. by K. I. of your said Town, single Woman, that she is gotten with Child by one T. S. also of your said Town, Butcher: These are therefore to will and require you, and in his Majesty's Name to charge and command you and either of you, that presently upon the Receipt hereof you apprehend the said T. S. and bring him before me, or some other of his Majesty's Justices of the Peace for this County) to find sufficient Sureties, as well for his Appearance at the next general Sessions of the Peace to be holden for this County, as also for his Good Behaviour towards his Majesty and all his Liege People in the mean Time. And hereof fail you not, as you will answer the contrary at your Peril. Dated, &c.

An Order for a Bastard-Child.

IF the Justices make an Order, from which the reputed Father ^{Bulfr.} appeals, and gives Security to abide the Order of Sessions, and ^{part 2.} the Sessions make another Order, which he refusing to obey, they ^{p. 341.} commit him; this is illegal, for they ought to prosecute him on his Security. *Hammond's Case. M. 3 Car.*

And an Appeal being made to Sessions from the first Order, the ^{Ib. p. 342.} Sessions ought to confirm or quash the first Order; and if the Sessions ^{343.} repeal the first Order, they may refer it back again to the Justices; but if they neither quash nor affirm it, they cannot refer it back. *Smith's Case.* And if the Justices at Sessions repeal the first Order, then it is *res integra*, and the Recognizance ought to be in the Disjunctive, to perform the Order, or to appear at Sessions; and for not obeying the Order one Justice of Peace may commit.

One hath a Bastard, and is not punished for it by 7 Jac. 4. and ^{Ib. p. 348.} she hath another Bastard, she shall not be punished for this last as for a second Offence by 7 Jac. 4. unless she had been punished for the first. *Jones Justice at Salop, Lent 7 Car.*

A Servant Maid is begot with Child at T. but by an Artifice she ^{Ib. p. 349.} is conveyed to a Hovel upon the Confines of that Parish, but in Truth within another Parish, where a Child is born. *Jones Justice of Assize* declared, that in Case such Practice be proved, the Child shall not be kept by the Parish where it was born, but where she was got with Child.

One B. a Servant Maid was begot with Child by one R. at D. ^{Ib. p. 350.} and the Child born there; R. takes it from the Mother, and puts it to nurse, and marries another Woman, and keeps the Child with him 10 or 11 Years together, and died, leaving a Wife and divers Children, which she was not able to maintain, but they were relieved by the Parish. The Mother of the Bastard for the most Part lived in Service, and had 3*l.* per *Annum* left her by her Friends, but was not in her own Hands: She was still able to do some Work, but was a Woman of weak Understanding. *Jones and Whitlock at Salop* Lent Assizes 7 Car. resolved, that the Child is to be sent to the Mother,

ther, if she be able to maintain it, if not, to the Place where it was
settled ten Years with the Father.

Wills ff.

The Order of Sir I. M. Knight, and M. D. Esquire, two of the Justices of Peace of the County of C. and one of Us of the Quorum, and both residing within the Limits where the Parish-Church of C. now standeth in the said County, the 6th Day of August 1725, according to the Statute in that Case made and provided, concerning a male Bastard-Child lately born in the said Parish, of the Body of A. B. single Woman, which Bastard-Child, ever since its Birth, hath been, and is still chargeable to that Parish, and likewise so to continue.

I*mprimis*, upon the Examination of the said K. duly by us taken, we do find that the said T. S. is charged to have had divers Times bodily and carnal Knowledge of her (between such Times) and to be the only Father of the said Bastard-Child, &c. and therefore we do adjudge him to be the reputed Father of the said Child.

We do farther order as followeth: First, that the said K. shall keep her said Child until it come to eight Years of Age.

Secondly, that the said T. S. upon Notice of this Order, shall, after such Notice, pay into the Hands of one of the Overseers of the Poor of W. (for the Time being) after the Rate of 3s. every Week, to be paid monthly every Year, towards the Relief of the said Child, until it comes to eight Years of Age.

Thirdly, That after the said Child shall come to Eight, &c. that the said T. S. pay to the Overseers, &c. 5l. toward the putting out of the same Child to be Apprentice, &c.

Fourthly, That the said T. S. presently give good Security to one of the Overseers, &c. to perform this our Order.

Touching the Order of the Justices next the Place according to 18 El. 3. Observe:

1. **T**hat if the Party appeal to the next Sessions, and the Justices there make an Order thereupon, it is final, and cannot be altered by any after Sessions. And this is expressly resolved in *Pridgion's Case. Jones 330. & Cro. Car. 1.*

2. It must appear by the Order that the Justices of Peace making the Order, are the next Justices of Peace to the Parish-Church where the Child was born, and that one of them is of the *Quorum. Style 154.*

3. It must appear that the Child was a Bastard, and born in the Parish, towards whose Relief Provision is made thereby, and an Order for that Cause was quashed. *H. 1652. B. R. Style p. 368.*

4. The Payment must be made to continue so long Time as the Child shall be chargeable to the Parish, and if not so made it is void. *Style 154.* For the Party may take it and keep it himself: And where the Mother is able, the Justices have nothing to do in the Case.

5. The Justices of Peace may adjudge a reasonable Sum in gross to be paid to the Parish for the Charge of the Woman's Lying in; and this I have known often ruled good.

6. None else can be made chargeable to the Keeping of it, but the reputed Father or Mother, and the Master for suffering it to be begot in his House.

H h h h

7. It

" 7. It must be positively declared and adjudged who is the reputed
 " Father, and not to repeat what Witnesses say, or what the Mother
 " saith; but the Order must be positive and absolute; for it is a Judg-
 " ment in the Case, and every Judgment must be positive and certain.
 " By 3 Car. 1. the Justices of Peace in Sessions have the same Au-
 " thority given them, as was given the two next Justices by 18 El. 3.
 " and the same Rules are to be observed in Drawing their Order *mu-*
 " *tatis mutandis.*

*Where a Maid Servant is gotten with Child, and from thence sent
 to her Place of Birth.*

W Hereas *I. M.* single Woman, for the Space of 1 Years now
 last past hath dwelt in the Parish of *W.* (in the County of *E.*)
 and being there settled in Service with *T. B.* of *W.* aforesaid, was got-
 ten with Child, and being so with Child is now sent or conveyed to
 your Town of *B.* under Colour that she was there born, and contrary
 to Law: These are in his Majesty's Name to charge and command
 you safely to convey the said *I.* to *W.* aforesaid, there to be set on
 Work, or otherwise to be provided for according to Law. And that
 you deliver and leave, or offer to leave, the said *I.* to and with some
 one of the Church-wardens or Overseers for the Poor of the Parish of
W. aforesaid. And hereof fail you not, &c.

Note, That such Maid Servant cannot be sent from the Place where
 she is (or was last) in Service to the Place of her Birth, but must set
 her self to labour where she last dwelt or served, being able of Body:
 Or being impotent, she is to be relieved by the Town where she last
 dwelt or served. See *hic antea, tit. Poor.*

A Warrant for Overseers to give up their Accounts.

To the High Constables of the Hundred of, &c.

Cambr.
 Overseers
 to account.

T Hese are in his Majesty's Name to charge and command you
 forthwith to give Warning to the Church-wardens, and other
 the Overseers of the Poor of every Parish within your Hundred, that
 they do personally appear before us at *New Market*, at the Sign of the
 Greyhound there, upon Tuesday the Tenth of *June* next coming, by
 Nine of the Clock in the Forenoon of the same Day, to yield up, and
 to make a true and perfect Account in Writing, subscribed with their
 Names or Marks, of all such Sums of Money as they have received,
 or rated and assessed and not received, for and towards the Relief of
 the Poor of their several Parishes, and also of such Stock (to set their
 Poor on Work) as is in their Hands, or in the Hands of any their said
 Poor to work, and of all * other Things concerning their said Office: * See
 And hereof that you fail not at your and every of your Perils. And what
 farther we require you, that you give Warning to the Petty Consta- they be in
 bles of every Town within your said Hundred, that they or one of the Title
 them be also then and there present before us, to inform and certify
 us of the Names of such other Persons as are meet and fitting to be
 Overseers of the Poor within their several Towns, for this Year next
 ensuing. And hereof fail you not, &c.

This Warrant must be under the Hands and Seals of two Justices at
 the least, the one of the *Quorum.* *Vide tit. Poor.*

A War-

A Warrant to new Overseers to take their Charge.

BY Virtue of the Statute made in the three and fortieth Year of the ^{New O-}Reign of our late Sovereign Lady Queen *Elizabeth*, (intituled, ^{versers to}*An Act for the Relief of the Poor*): These are to will and require ^{take the}you whose Names are here under written, that you together with the Church-wardens of your Parish for the Time being, do (according to the same Statute) take order from Time to Time, for this Year to come, for the setting to Work of the Poor within your Parish, and for the Raising of a convenient Stock of some Ware or Stuff in your Town to that Purpose; and for the providing of necessary Relief for such as be lame and impotent amongst you; and for the Placing as Apprentices such Children whose Parents are not able to maintain them: And hereof see that you fail not at your Perils. Dated under the Hands and Seals of us *I. S.* and *I. D.* two of his Majesty's Justices of Peace within the said County of *Cambridge*.

This Warrant must be under the Hands and Seals of two Justices. *Vide antea, tit. Poor.*

A Warrant to distrain such as refuse to pay their Rates for the Poor.

But first the Justices shall do well to send their Warrant for the Offenders to make Answer to the Complaint, and after to grant their Warrant, if they find Cause. See *hic cap. 2. & 7.*

Or else the Justices may make their Warrant after this Manner.

To the Church-wardens, and other the Overseers for the Poor within the Parish of W. and every of them.

Cambr.

WHereas we are credibly informed, that the Persons here under ^{To distrain}named do refuse to pay the Sums of Money here under men- ^{for the}tioned, being assessed and rated upon them severally, for and towards ^{Poor's}the necessary Relief of the Poor of your said Town, according to the ^{Rate.}Form of the Statute in that Behalf provided: These are therefore in his Majesty's Name to charge and command you, and every of you, forthwith to require and Cause the said Persons (so refusing) to be before us, to shew Cause of their said Refusal; And if they or any of them shall refuse to come before us, that then immediately you do levy all and every the said several Sums of Money unpaid, and all the Arrearages thereof, of all and every the said Persons so refusing, by Distress and Sale of the Offender's Goods, you rendring unto the Parties the Overplus that shall remain upon the Sale of the said Goods. And this shall be your sufficient Warrant therein. Dated, &c. *Vide antea, tit. Poor.*

*Another.**To the Church-wardens, &c.*

Cambr.

THese are in his Majesty's Name to charge and command you, and ^{Another to}every of you, to demand of all and every the Persons here under ^{distrain,}named, all and every the several Sums of Money here under ^{&c.}severally written, being assessed and rated upon them for and towards the

H h h h 2

necessary

necessary Relief of the Poor of your said Town, according to the Form of the Statute in that Behalf provided: And if they or any of them shall refuse to pay the said several Sums of Money so rated upon them, that then you levy the same by Distress and Sale of the Offender's Goods, rendring to the Parties the Overplus that shall remain upon the Sale of their said Goods. And this shall be your sufficient Warrant therein. Dated, &c.

These two last Warrants must also be under the Hands and Seals of two Justices, &c.

And in all Cases of Distraining and Sale of an Offender's Goods, and rendring the Party the Overplus, the Apprisement of such Goods would be made by four of the honest Inhabitants of the Parish where such Goods remain and be, according to the Statute of 3 Jac. cap. 10. in like Case.

A Warrant for a general Search for Rogues.

To the High Constable of the Hundred of, &c.

Cambr.
Search for
Rogues

TH E S E are in the King's Majesty's Name to charge and command you, that together with the petty Constables of the several Towns, Parishes and Hamlets within your Hundred, (taking sufficient Assistance out of the said Towns) you make a general privy Search within every of the said several Towns, Parishes and Hamlets, upon *Tuesday* at Night next coming, for the finding out and apprehending all Rogues, Vagabonds, and wandring and idle Persons, in or about your said several Towns, Parishes or Hamlets; and that such as shall be found and apprehended, you do cause them to be brought before us the next Day unto *L.* by nine of the Clock. At which Time and Place we farther require you, together with the said Petty Constables to appear before us, and there to give an Account upon Oath, in Writing, and under the Hands of the Minister of every several Parish within your Hundred, what Rogues, Vagabonds, wandring and disordered Persons have been there apprehended, as well in the same Search, as also since the last Meeting that was made for this Purpose, being upon or about the 20 Day of *July* last past. And hereof fail you not, &c.

Note that all Rogues which shall be brought before the Justices upon such Search (after Examination of their idle Life taken by the Justices) are either to be whipped by the Constables of the Town where the Justices sit, or rather the Constables of the Town where the Justices sit may procure some other to inflict the Punishment of Whipping of all such Rogues as are brought thither; and the Constables that brought those Rogues from other Towns, are to satisfy such Persons as shall whip them; or else such Rogues are from thence to be sent to the House of Correction, and to be conveyed thither by the Constables that brought them, and yet at the Charge of the Hundred: Which Services imposed upon the Constables are some Cause of their Neglect; and therefore I have set down another Method and Precedent, perhaps no less serviceable, which also may be performed and done every Month, or at every Meeting of the Justices: Or if the Justices cannot, or shall not meet, yet, such Warrant may be granted by any Justice of Peace, as followeth.

See the
Title of
Rogues.

These

Cambr.

TH E S E are in the King's Majesty's Name to charge and com-^{To search for Rogues.}
mand you, that, together with the petty Constables of the se-
veral Towns, Parishes and Hamlets within your Hundred, (taking
sufficient Assistance out of the said Towns) you do make a general
privy Search within every of the said several Towns, Parishes and
Hamlets, upon *Thursday* at Night next coming, for the finding out
and apprehending all Rogues, Vagabonds and wandring and idle Per-
sons, in or about your said several Towns; and that such as shall be
found and apprehended, you do cause them to be punished in every
several Town or Parish where they shall be so apprehended, by the
petty Constables of every several Parish respectively, and by them
also farther to be conveyed according to the Statute: And if any of
the said Rogues shall appear to be dangerous or incorrigible, that
then you cause such to be brought before me, or any other of his
Majesty's Justices of the Peace of this Division, to be farther dealt
withal according to the Statute in such Cases provided. Dated, &c.

Afterwards any one of these Justices may take the Examination
of, or Proof against such dangerous Rogue, and finding that he hath
offered any Violence, or used any threatening Speeches, or other
like Misdemeanor towards any Person; or that he hath been for-
merly punished, and sent home; or that he affirms untruly where
he was born, or will not be known, or knows not where he was
born or last dwelt; (for then it is apparent that he hath been and
continued a Rogue of a long Time) in every such Case the Justice
may then join with any other Justice of Peace of that Limit, being
of the *Quorum*, and commit such Rogue to the House of Correcti-
on or Gaol, as an incorrigible Rogue, although the said two Justi-
ces shall not meet together about it.

39^{El.} 8.

Jac. 7.

P. Vag. 4.

A Warrant for a fugitive Servant.

To the Sheriff of, &c.

W Hereas *I. E.* being lawfully retained in Service with *N. A.* ^{Servant departing from his Master.}
of, &c. is departed from his said Master's Service before the
End of his Term, without his Master's Leave, (or without any rea-
sonable Cause) contrary to the Laws and Statutes of this Realm in
this Behalf provided: These are therefore to command you, and e-
very of you, that you, or some one of you, do apprehend the said
I. E. and bring him before me, (or some other Justice of Peace, &c.)
to find sufficient Sureties, well and faithfully to serve his said Master,
according to the Covenant between them made: And if he shall re-
fuse thus to do, that then you cause him to be conveyed safely to the
common Gaol, &c. (as before, in a Warrant for the Peace). Given
under the Hand of me *T. S.* one of his Majesty's Justices of Peace
within the said County.

Or thus; That the said *I. E.* to his said Master to serve him a-
gain you do cause to be delivered: And if that to do he shall re-
fuse, that then you cause him to be conveyed to the Gaol, &c.

A War:

A Warrant for one refusing to serve.

Cambr.
Servant
refusing to
serve.

Michael Dalton Armig^r, unus Magistr. Cur. Cancellar. & unus Crompt.
Just. &c. R. L. Ballivo de S. in Com. pred. salut. Ex parte 288.
dicti Dom. Reg. tibi mando, quod attachies R. A. de S. pred. La-
bourer, ita quod eum habeas coram me vel sociis meis Just. dicti
Dom. Regis ad Pacem in Com. pred. conservand^m, necnon ad divers.
Felonias, Transgress. aliaque malefacta in eodem Com. audiend^m &
term^s, assign^s, ad prox. general. Sess. Pacis in Com. pred. tenend^m, ad
respond. tam dicto Dom. Regi, quam B. C. de A. &c. Yeoman, qua-
re ipse pred. R. A. licet in servitio congruo pro statu suo per pref.
B. C. fuit sepius requisit^s ei servire, ipsi tamen B. C. servire penitus
recus. in contempt. dicti Dom. Regis & ipsius B. C. grave dampnum,
& contra formam Statut. de servientibus nuper edit. & provisi. Et
habeas ibi tunc hoc Mandat. Teste, &c.

And yet see the Statute 4 El. cap. 4 whereby the Departure of a
Servant, and refusing to serve, &c. are referred to two Justices of
Peace, by them to be first examined, and then the Offenders to be
committed if they be faulty therein. See antea, Tit. Labourers and
Warrants.

For Alehouse-keepers to renew their Recognizances.

Cambr.
Alehouse-
keepers to
renew
their Re-
cognizance

JOHN St. George Esquire, one of his Majesty's Justices, &c.
These are in his Majesty's Name to require you, to direct your
Precepts to every petty Constable within your Hundred, requiring
them, that they warn all Alehouse-keepers and Victuallers in their se-
veral Towns within your said Hundred, to be and personally appear
before us at Linton upon Thursday, &c. then and thither bringing
with them their former Licences: And farther, that every of them
bring with them a Certificate of their Fitness and honest Behaviour,
to keep their Alehouses and Victualling-houses, under the Hands of
four, at the least, of the most substantial Inhabitants of the Parishes
where they so keep or dwell. And hereof fail you not, &c.

A Warrant for the suppressing of an Alehouse.

Alehouse
to suppress.

TAlbot Pepis and Isaac Barrow Esquires, two of his Majesty's
Justices of Peace for the said County of Cambridge, to the
Constables of B. and either of them, Greeting. Whereas we are cre-
dibly informed, that R. D. of your Town, Victualler, is himself a
Man of evil Behaviour, and besides doth suffer Disorders to be kept in
his House, contrary to the Laws and Statutes of this Realm: These
are therefore to will and command you forthwith to go to the House
of the said R. D. and to charge him to surcease from keeping any
longer any Alehouse, or Tippling-House, and from selling of Ale or
Beer at his Peril; and withal that you cause his Sign to be pulled
down. Hercof fail you not, as you and either of you will answer to
the contrary at your Peril. Given under our Hands and Seals at B.
the 20th Day of August, and in the Year of our Lord George, &c.

A War-

A Warrant to levy Money forfeited by Alehouse-haunters.

Cambr.

John Gill Esq; one of his Majesty's Justices of the Peace for the ^{Alehouse} said County of ^{Haunters.} Cambridge, to the Constables and Church-wardens of the Parish of *W.* and to every of them, Greeting. Whereas it hath been duly proved before me, according to the Statute in that Behalf provided, that all and every the Persons hereunder named, being Inhabitants within your Parish of *W.* upon the twelfth Day of this instant Month of *November*, have been and continued drinking and tippling in the House of *G. W.* of your said Town * (Inn-keep-^{* Or Ale-}er,) contrary to the Form of the said Statute: These are therefore in ^{house-}keeper. his Majesty's Name to charge and command you, and every of you, forthwith to levy by Distress and Sale of the Goods of every the said Persons hereunder named the Sum of three Shillings and four Pence apiece, if they shall refuse or neglect forthwith to pay the same; (which several Forfeitures shall be bestowed and employed by you to the Use of the Poor of your said Parish) and that you render to every of the said Offenders the Overplus that shall remain upon your Sale of their said Goods: And if the said Offenders, or any of them, shall refuse or neglect to pay their said several Forfeitures, and that you can find no sufficient Distress whereon to levy the same, that then you the Constables, or one of you, shall commit every such Offender or Offenders (refusing or neglecting to pay the said Sum or Forfeiture, and not having sufficient whereon to be distrained for the same) to the Stocks, there to remain by the Space of four Hours. And this shall be your sufficient Warrant herein. Dated, &c.

But before the Justice of Peace shall grant these two last Warrants, or the like, he shall do well first to send for the Offenders, and to examine them of the Offence, &c. See *hic antea*.

Against Alehouse-keepers.

ALSO a Warrant, (like unto the last) may be made to levy the Forfeiture of Inn-keepers or Alehouse-keepers, for suffering Townsmen or others to continue drinking in their House, saving that the Distress taken of such Inn-keepers and Alehouse-keepers is not to be sold till after six Days; and then for Default of Satisfaction, the same are presently to be appraised and sold, and therefore such Warrant must herein be made accordingly. See 1 *Jac. cap. 9. P. 7. 8.*

A Warrant for the Removing of a petty Constable, and for the Swearing of another.

GEORGIUS, Dei gratia, &c. Vicecom' Cantabr' necnon Ca- To remove
pituli Constabul' Hundredi de R. & eorum cuilibet, salut. Quia a petty Con-
W. P. & R. S. Subconstab' Vill' de C. & K. (certis de causis nos mo- stable.
vent') ab Officio suo amoveri & exonerari fecimus: Ideo vobis & cui-
libet vestrum, conjunctim & divisim, precipimus & mandamus, quod
I. F. & R. M. ad omnia & singula eidem Officio incumbencia bene &
fideliter exercenda & exequenda (prout ipsi nobis inde respondere vo-
luerint) jurare faciatis: dictis W. P. & R. S. similiter injungentes,
quod ipsi de dicto Offic' ulterius exercendo & exequendo nullatenus se
intro-

intromittant, quousq; aliud de nobis habuerint mandatum. Et quicquid inde feceritis Justiciariis nostris ad Pacem nostram in dicto Com' conservand' assign' ad prox' general' Sessionem Pacis apud C. in dicto Com. tenend' certificetis, hoc Preceptum nostrum tunc & ibidem remittentes. Teste Robert Lawrence Armig', uno Justic' nostror' predict', tali die, &c.

'Tis a very unusual Precedent to begin in the Name of the King, and to be Tests in the Name of a Justice, &c. Leet. You shall find this former Precedent in *M. Lamb.* But upon such Warrant, *quere* who shall give the Oath to the new Constables, whether the High Sheriff, or High Constable that shall execute such Warrant, or the Justice of Peace that granted out such Warrant. But for this Authority of removing petty Constables, and of chusing and swearing new, it is reputed properly to belong to the Leet, (it being one of the ancientest Courts in the Realm. *Br. Leet* 14) And if the new Elect be not present at the Leet to take his Oath accordingly, then upon Certificate or Notice thereof to any Justice of Peace of that County, the Justice doth use to send his Warrant for the Parties so chosen, and to give them their Oath.

Also in Default of the Leet, or otherwise, where there shall be just Cause to remove a petty Constable for his Insufficiency, or for any Misdemeanor, or other, every Justice of Peace, *ex Officio*, may remove the old Constables, and may chuse and swear new: Which also we see warranted by common Experience. See *Lamb.* of the Duties of Constables. *Page 19.*

And I have seen some Precedents to such Purpose, as followeth.

To our loving Friend A. B. of W. Yeoman.

TH E S E are in his Majesty's Name to charge and command you ^{* If they were not chosen at the Leet, this Clause is to be left out.} to come before us, or some other Justice of Peace of this County, to take the Oath of a Constable, to serve his Majesty within the Town of *W.* (*according to the Choice made of you by the Jury at the last Leet holden in your Town.) And hereof fail you not. Dated under the Hands of *M. N.* and *N. O.* Esquires, two of his Majesty's Justices of Peace, &c.

The Form of the Oath concerning the Office of a Constable.

YO U shall swear, that you shall well and truly serve our Sovereign Lord the King in the Office of a Constable. You shall see and cause his Majesty's Peace to be well and duly kept and preserved, according to your Power. You shall arrest all such Persons as in your Sight and Presence shall ride or go armed offensively, or shall commit or make any Riot, Affray, or other Breach of his Majesty's Peace. You shall do your best Endeavour (upon Complaint to you made) to apprehend all Felons, Barreters and Rioters, or Persons riotously assembled: And if any such Offenders shall make Resistance (with Force) you shall levy Hue and Cry, and shall pursue them until they be taken. You shall do your best Endeavour that the Watch in and about your Town be duly kept for the apprehending of Rogues, Vagabonds, Night-Walkers, Eves-Droppers, and other suspected Persons, and of such as go armed, and the like: And that Hue and Cry

Cry be duly raised and pursued, according to the Statute of *Winchester*, against Murderers, Thieves, and other Felons: And that the Statutes made for the Punishment of Rogues and Vagabonds, and such other idle Persons, coming within your Bounds and Limits, be duly put in Execution. You shall have a watchful Eye to such Persons as shall maintain or keep any common House or Place where any unlawful Crime is or shall be used: As also to such as shall frequent or use such Places, or shall use or exercise any unlawful Games there or elsewhere, contrary to the Statutes. At your Assizes, Sessions of the Peace, or Leet, you shall present all and every the Offences done contrary to the Statutes made (1 *Fac.* 4. *Fac.* and 21 *Fac. Reg.*) to restrain the inordinate Haunting and Tippling in Inns, Alehouses, and other Victualling Houses, and for repressing of Drunkenness. You shall there likewise true Presentment make of all Blood-sheddings, Affrays, Out-cries Rescous, and other Offences committed or done against the King's Majesty's Peace within your Limits. ' You shall ' once every Day during your Office present at the Quarter-Sessions, ' all Popish Recusants within your Parish, and their Children above ' nine, and their Servants, (*sc.* their monthly Absence from the ' Church) 3 *Fac.* 4. And you shall have a Care for the Maintenance ' of Archery according to the Statute. You shall well and duly execute all Precepts and Warrants to you directed from the Justices of ' Peace of this County, or higher Officers. You shall be aiding to ' your Neighbours against unlawful Purveyances. In the Time of ' Hay or Corn Harvest (upon Request) you shall cause all Persons ' meet to serve by the Day for the Mowing, Reaping, or getting in of ' Corn or Hay. You shall in *Easter* Week cause your Parishioners to ' chuse Surveyors for the Mending of the Highways in your Parish. ' You shall have a Care that the Malt made or put to Sale in your ' Town, be well and sufficiently made, trodden, formed and dressed. And you shall well and duly according to your Knowledge, Power and Ability, do and execute all other Things belonging to the Office of a Constable, so long as you shall continue in this Office. *So help you God.*

This Oath I have set down the more largely, whereby to shew the principal Matters whereof the Constables are chiefly to have Care.

C H A P. CLXXV. *Vide* CXXII.

The Form of a Supersedeas by a Justice of Peace.

Cambr.
*The Supersedeas is good, though it namenei-ther the Sureties nor the Sum.

Richard Love Doctor of Divinity, and Vice-chancellor of the University of *Cambridge*, one of the Justices of Peace of our Sovereign Lord the King's Majesty within the County of *Cambridge*, to the Sheriff, Bailiffs, Constables, and other the faithful Ministers of our Sovereign Lord within the said County, and to every of them, sendeth Greeting. Forasmuch as *A. B.* of, *&c.* Yeoman hath personally come before me at *W. &c.* and hath found sufficient Surety, that * is to say, *C. D.* and *E. F. &c.* Yeomen, either of the which hath undertaken for the said *A. B.* under the Pain of 20*l.* and he the said *A. B.* hath

undertaken for himself under the Pain of 40*l.* that he the said *A. B.* shall well and truly keep the Peace toward our Sovereign Lord and all his liege People, and especially towards *G. H.* of, &c. Yeoman, and also that he shall personally appear before the Justices of the Peace of our said Sovereign Lord, at the next general Sessions of the Peace to be holden for this County of *Cambridge*. Therefore on the Behalf of our Sovereign Lord I command you and every of you, that you utterly forbear and surcease to arrest, take, imprison, or otherwise by any Means (for the said Occasion) to molest the said *A. B.* and if you have (for the said Occasion, and none other) taken or imprisoned him, that then you do cause him to be delivered and set at Liberty without farther Delay. Yeoven at *Cambridge* aforesaid, under my Seal, this last Day of *July*, &c.

Alias.

Henicus Bing *Serviens ad Legem, unus Justic' Dom' Regis, &c. Vic. ac omnibus & singulis Ballivis, Ministris, & fidelibus dict' Dom' Regis in eodem Com', & eor' cuilibet salutem. Quia J. S. suffic' secur' de Pace (& de bono gestu suo) erga dict' Dom' Regem, & precipue erga W. T. coram me invenit: Ideo ex parte dict' Dom. Regis vobis & cuilibet vest' mando & precipio, firmiter injungens, quod de ipso J. S. pro hujusmodi secur' Pacis inveniend' cap' sive arrestand' omnino supersed' : Et si ipsum J. S. ea occasione ceperitis sive imprisonaver', tunc eum deliberari fac', si ipse ea occasione, & non alia, detineatur. Teste, &c.*

If the Prisoner be in the Gaol, see another Form, *hic postea*, Tit. *Liberate*.

Note, that such *Superfedeas* is good, though it name neither the Sureties nor the Sums wherein they are bound: But yet it is the better Form to express them both, for then if it shall appear that the Sureties are not sufficient Men, or not bound in sufficient Sums, better Sureties may be taken. And accordingly all the *Superfedeas*'s issuing out of the Chancery, King's Bench, and Court of Common Pleas, do rehearse the Names of the Sureties and the Sums: And those Things which the higher Courts do use, are the Rules and Orders for others to follow, &c. 2 *H. 7. f. 1. Fitz. Superfedeas 4.*

The Form of a *Superfedeas* (by a Justice of Peace) upon a Writ of *Supplicavit* against an Infant.

Cantabr.
Superfede-
as upon a
Supplica-
vit.

S. C. *Sacre Theologie Doctor, unus Justiciar. Domini Regis nunc ad Pacem in Com. pred. conservand. assignat', Vicecomit. ejusdem Com', ac omnibus & singulis Ballivis, Constabular'. ceterisq; dicti Dom. Regis Ministris tam infra Libertates quam extra, in Com. pred, salutem. Sciatis quod Breve dicti Dom. Reg. recepi in hec verba; GEORGIUS, &c. (reciting here all the Writ verbatim) Et quia J. B. de, &c. J. S. de, &c. & pefat. C. A. coram me pef. S. C. personaliter comparuer', & predict. J. B. & J. S. manuceper. pro dicto C. A. qui infra etatem 21 ann. existit, viz. quilibet Manucaptor pred. in 20 li. quas recognover. se debere dict. Dom. Regi, ac concess. de terris & tenementis, bonis & catallis suis, ad opus dicti Dom. Reg. levand', viz. quod pred. C. A. dampnum vel malum aliquod alicui de populo dicti Dom. Reg. de corpore suo, vel de incendio domorum suarum non faciet, nec fieri procurabit quovis modo: Ideo ex parte dicti Dom. Reg.*

Nota In-
fant.

Reg. vobis & cuilibet vestrum mando, quod de coarctand. aut attachiand. dictum C. A. ad inveniend. Securitatem Pacis per ipsum gerend. erga dictum Dom. Reg. & cunctum popul. suum, seu aliquem de eodem populo suo, coram vobis, seu aliquo vestr', inveniend. supersed', seu supersed. fac. omnino. Et si ipsum C. A. occasione pred. & non alia ceperitis, seu capi mandaver', & in prisiona ipsius Dom. Regis sub custodia vestra detinueritis, tunc ipsum a prisiona in qua detinetur sine dilatione deliber. fac. seu unus vestr. deliberari fac'. Teste me prefat. Sam. C. 22 die Nov. anno Regni dict. Dom. Reg', &c.

Alias.

H. S. Sacre Theologie Doctor, &c. unus Justiciar. Domini Regis Cantab. &c. Vic. Com. pred', necnon omnibus Constabulariis, Ball. ac aliis Ministris dicti Dom. Regis, & eorum cuilibet, salutem. Sciat, quod Mandat. (aut Breve) Dom. Regis in hec verba recepi; GEORGIUS Dei gratia, &c. (reciting all the Writ) Et quia J. B. de, &c. & J. S. de, &c. & pred. T. C. coram me pref. H. S. personaliter comp. & pred. J. B. & J. S. pro pred. T. C. manuceper', quilibet Manuapt. pred. sub pana 20l. & pred. T. C. pro seipso assumpsit sub pana 40l. de terris & Catallis suis, ad opus dict. Dom. Reg. levand. quod, &c. Ideo, &c. quod pred. T. C. dampnum vel malum, &c. ut supra.

A Superfedeas for the Good Behaviour.

Crom.
237.

NOTE, that upon good Sureties taken, (for the Good Behaviour) a Superfedeas of the Good Behaviour may be granted as for the Peace, *mutatis mutandis*.

Note also, that a Superfedeas de Capias indictatum de Transgression', and so of an Exigent, may be granted by the Justice of Peace out of Sessions: For otherwise it were mischievous for the Party, as well by Reason of his Imprisonment, as also for that he may be out-lawed before the Sessions, if the Justice of Peace might not take Sureties of him for his Appearance; and all is but to appear to answer to the Indictment.

Crom.

234.
Hic 275.
Lib. Intr.
601.
Lam. 508.

And Mr. Crompton is of Opinion, that these may be granted by any one Justice of Peace; with whom agreeth the Book of Entries. But Mr. Lambert thinketh it not in the Power of any one Justice of Peace to grant such Superfedeas at this Day, but that it must be done by two Justices at the least, and the one being of the Quorum; nevertheless for that I find the old Precedents to run in the Name of one Justice of Peace alone, I have drawn these accordingly, perswading notwithstanding the Joining of two Justices herein, and the one of the Quorum, if they may conveniently.

A Superfedeas de Capias indictatum de Transgress.

Cantab.

Thomas Bambridge, Sacre Theologie Doctor, unus Just. Dom. Regis nunc ad Pacem in Com. pred. conservand', nec non ad diversas Felon. Transgr', &c. in eodem Com. audiend. & terminand. assign. Vic. Com. pred. salutem. Quia C. D. de A. in Com. tuo Teoman, venit coram me, & invenit suffic. Manuaptiores essendi coram Justic. dict. Dom. Regis ad Pacem in Com. pred. conservand', necnon ad diversas Felon', &c. in dict. Com. audiend. & terminand. assign', ad generalem Session. Pacis apud C. in Com. pred. prox. die tenend. ad respondend. dict. Domino Regi de quibusdam transgr'. contempt', & offensis, unde

unde indict' existit. Ideo ex parte dicti Dom' Regis tibi precipio, quod de capiend' prefat' C. D. seu ipsum imprison', aut eum ea ex causa aliquo modo molest', omnino supersed'. Et si eum ea ex causa, & non alia, ceperis, tunc ipsum sine dilatione deliber' facias. Teste me, &c.

Alias qui invenit Plegios pro Fine.

Cantab.
A Superfedeas upon putting in Security to pay a Fine.

Thomas Wilson Sacre Theologie Doctor, unus Just' dicti Dom' Crom. Regis ad Pacem in Com' pred' conservand', necnon ad diversas²³³ Felon', Transgr', & alia malefacta in eodem Com' audiend' & terminand' assign'. Vic' Com' pred', ac omnibus & singulis Ballivis, Constab', ceterisque dicti Dom' Regis Ministris, tam infra Libertates quam extra, in Com' pred' salutem. Licet nuper per breve (vel precept') dicti Dom' Regis vobis seu uni vestr' precept' fuit, quod caperetis, seu unus vestr' caperet, A. B. de S. in Com' pred' Teoman, si invent' fuerit in eod' & ipsum salvo custod', ita quod haberetis, seu unus vestr' haberet, corpus ejus coram Custod' Pacis ac Just' dicti Dom' Regis ad pacem in Com' pred' necnon ad diversas Felon' Transgr' & alia malefacta in eod' Com' audiend' & terminand' assignat' apud Cantabr. tali die, ad respond' dicto Dom' Regi de contempt' & transgr' unde coram dict' Ju' indictatus existit. Qui modo pred' A. B. venit coram me, & invenit suffic' Plegios pro Fine suo cum dicto Dom' Rege pro premiss. faciend'. Ideo ex parte dicti Dom' Regis vobis conjunctim & divisim mando, quod ad executionem Brevis pred' ulterius faciend' supersed' omnino. Et si ipsum A. B. ea occasione, & non alia, ceperitis, & in prisona dicti Dom' Regis detinueritis, tunc ipsum sine dilatione ab eadem delib' faciatis, seu unus vestr' delib' faciat. Et habeatis, seu unus vestr' habeat, hoc precept' ad Sessiones pred'. Dat' 3 Aug. Anno Regni, &c.

Superfedeas de Capias pro Fine.

Cantab.

Johannes St. George Armig' unus Just' Dom' Regis nunc ad Pacem Crom. in Com' conservand' assign' Vic' Com' pred' salut'. Quia C. D. de²³⁴ A. in dicto Com' Teoman, venit coram me, & invenit suffic' Manucapi' essendi ad prox' general' Session' Pacis in Com' pred' tenend' ad faciend'. Finem cum dicto Domino Rege pro quibusdam transgr' contempt' & offensis, unde indictatus existit. Ideo tibi precipio, quod de capiend' pref. C. D. imprisonand' seu ipsum ea occasione aliquo modo molestand' omnino supersed'. Et habeas ibi tunc hoc precept'. Teste me, &c.

Superfedeas de Capias indictat' de Felonia.

Cantab.

Talbot Pepis Armig' unus Justic' Dom' Regis nunc ad Pacem in Crom. Com' pred' conservand' assign', Vic' Com' pred', necnon omnibus²³⁴ & singulis Ballivis, Constabulariis, ceterisque dicti Dom' Regis Ministris, tam infra Libertates quam extra, in dict' Com' salutem. Quia A. B. de C. in Com' pred' Husbandman, venit coram me, & invenit sufficient' Secur' essendi coram Just' dicti Dom' Regis ad Pacem in Com'.

Com' pred' conservand', necnon ad diversas Felonias, Transgr', & alia malefacta in eodem Com' audiend' & terminand' assign', ad prox' general' Session' Pacis in Com' pred' tenend', ad respondend' dicto Dom' Regi de diversis Feloniis & Transgr' unde coram eis indictat' existit. Ideo ex parte dicti Dom' Regis vobis & cuilibet vestr' mando, quod de capiend' pred' A. B. ea ex causa supersed' omnino, & si eum ea occasione, & non alia, ceperitis seu imprisonaver', tunc ipsum sine dilatione deliberari faciatis. Dat', &c.

Superfedeas de Exig' fac' de Felonia.

Crom.
234

GEORGIUS, &c. Vic' Com' Cantabr' salutem. Quia C. D. de Cantab. A. in Com' tuo Teoman, venit cor' E. F. &c. & invenit suffici-ent' Manucaptor' essendi coram Custod' Pacis nostre (ac Just' nostris ad diversas Felon', &c.) ad general' Session' Pacis nostre apud C. tali die tenend' ad respondend' nobis de quibusd' Feloniis inde indictatus est. Ideo tibi precipimus, quod de ulterius exigend' prefat' C. D. ad aliqu' Comitatu' tuum, vel imprisonand' sive ipsum ea occasione aliquo modo molestand', omnino supersed'. Et habeas ibi tunc hoc Breve. Teste Willielmo Marche apud H. tali die & anno.

Superfedeas ad deliberandum Prisonarium capt' pro transgressione vel similiter.

M. D. Armig' unus Justic', &c. Constabulariis Ville de B. necnon Custodi Gaole dicti Dom' Regis in Com' pred' salutem. Quia W. C. de B. Labourer, venit coram me, & invenit suffic' Secur' essendi coram Justic' dicti Dom' Regis ad prox' general' Session' Pacis in Com' predicto tenend' ad respondend' tam Dom' Regi quam B. C. de quibusd' transgr' seu contemptibus, &c. per ipsum perpetratis. Ideo vobis & cuilibet vestrum mando, quod pred' W. C. a custodia vestra sine dilatione deliberari faciatis, & alio mandato meo inde direct' interim supersedeatis. Et hoc Mandatum meum erit vobis & cuilibet vestrum Warrant. Datum apud West Watting tali die, &c.

C H A P. CLXXVI. Vide CXXIII.

Recognisance.

A single Recognisance taken before Justices of the Peace.

Memorand', quod 20 die Febr' anno Regni Dom' nostri Geor. Dei gratia, Angliæ, Scotiæ, Franciæ & Hiberniæ Regis, Fi- dei Defensoris &c. venerunt coram Mi. D. & I. B. Armigeris Just' dicti Domini Regis ad Pacem in Com' C. conservandam assign' I. S. de B. in Com' Teoman, & W. S. de eadem Weaver, ac R. D. de S. in

Cantab.

Single Re-
cognisance.

in Com' pred' Tailor, & recognover' se debere dicto Dom' Regi, viz. quilibet Manucaptor' pred' quinque librar' & pred' l. s. decem librar' bone & legalis monete Anglie, (solvend' eid' Dom' Regi in Festo Purificationis Beate Marie Virginis proximo futuro post datum present') Et nisi fecerint, concesserunt pro se, Hered' Executor' & Administrat' suis per presentes, quod dictæ separales summe leventur & recuperentur de maneriis, terris, tenementis, bonis, catallis, & hereditamentis ipsor' l. s. w. s. & R. D. Hered' Executor' & Assign' suor' ubicunq; fuerint invent. Dat', &c.

Another single Recognizance.

Cantab. Another single Recognizance, and the most usual. **M**emorand' quod 20 die Januarii anno Regni Dom' nostri Geor. Dei gratia, &c. D. E. de Balsam in Com' pred' Teoman, personaliter venit coram Mi. D. Armig' uno Justiciar' dicti Dom' Regis ad Pacem in Com' pred' conservand' assign' & recognovit se debere dicto Dom' Regi 10l. bone & legalis monete Anglie, de bonis & catallis, terris & tenementis suis fieri & levari, ad opus dicti Dom' Regis, Hered' & Successor' suor', si defecerit in Conditione indorsata.

Alias.

Cantab. Another with two Sureties, and this is the usual Form. **M**emorand' quod 10 die Decembris anno Regni, &c. vener' coram me M. C. uno Just', &c. assign', T. H. de West Wrattling in Com' pred' Teoman, & l. s. de eisdem Vill' & Com' Husbandman, & manuceper', & uterq; eor' separatim manucepit, sub pena 5 l. legalis monete Anglie, pro W. St. de W. pred' Tailor, & pred' W. St. assumpsit pro seipso sub pena 10 l. consimilis monete Anglie; quas quidem separales summas recognover', & quilibet eor' (ut predicatur) recognovit se debere dicto Dom' Regi, de terris & tenementis, bonis & catallis, suis fieri, &c. si pred' W. St. defecerit in perform' * Condit' introscript. * See the Condition on the other Side, and this is now the Common Practice.

Infant. If the Party to be bound be within Age, then he shall be bound by Sureties only, (but he himself shall not be bound) and then shall the Recognizance be *ut supra* to this Mark, * and then as followeth: Qui infra etatem 21 annor' existit. Quas quidem separal' summas recognover', & uterq; eor' (ut predicatur) recognovit se debere, &c. *ut supra*.

A Recognizance for the Peace.

Recognizance for the Peace with the Condition in it. **M**emorand' quod 10 die Aprilis anno Regni Dom' nostri Geor. Dei gratia, &c. R. P. de E. in Com' pred' Teoman, in propria persona sua venit coram me Th. T. Armigero uno Just' dicti Dom' Regis ad Pacem in dicto Com' conservand' assign' & assumpsit pro seipso sub pena 20 l. & H. I. de L. in Com' predict' Teoman, & N. N. de, &c. & P. Q. de, &c. Husbandmen, tunc & ibid' in propriis personis suis similiter venerunt, & manuceper' pro predict' R. P. viz. quilibet eor' separatim sub pena 100 s. quod idem R. P. personaliter comparebit coram Just' dicti Dom' Regis ad Pacem, ad prox' general' Sessionem Pacis in Com' predict' tenend' ad faciend' & recipiend' quod ei per Curiam tunc & ibid' injungetur: Et quod ipse

ipse interim Pacem dicti Domini Regis custodiet erga ipsum Dominum Regem, & cunctum populum suum, & precipue versus M. N. de A. predicti Teoman, quod damnum vel malum aliquod corporale aut gravamen prefato M. N. aut alicui de populo dicti Domini Regis, quod in lesionem aut perturbationem Pacis ipsius Domini Regis seu prefati M. cedere valeat quovis modo, non faciet, nec fieri procurabit. Quam quidem summam viginti librarum predicti R. P. & quilibet Manucaptor predicti predictas separales summas centum solidi recognoverunt se debere dicto Domini Regi, de terris & tenementis, bonis & catallis suis quorumlibet & cujuslibet eorum, ad opus dicti Domini Regis, Heredi & successorum suorum, fieri & levare, (ad quorumcunque manus devenerint) si contigerit ipsum R. P. premissa, vel eorum aliquod, in aliquod infringere, & inde legitimo modo convinci. In cujus rei testimonium ego predicti Tho. T. sigill meum apposui. Dat' apud, &c.

Lib. Intr.
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And if the Justice shall only subscribe his Name to the Recognisance without his Seal, it is well enough; and so is the usual Course and Form with us, and that in either of these Sorts, *sc. Recognit. coram me R. Th.* or only to subscribe the Justice's Name thus, *R. Th.*

Or thus for the Peace.

Cantab.
Lamb.
109.

Memorandum quod 20 die, &c. A. B. de, &c. & W. D. de eadem Teoman, venerunt coram me Johanne Layer Armig' uno Just. &c. & manuceper' pro I. S. nuper de L. &c. quod ipse personaliter comparebit coram me prefato Johanne Layer, & sociis meis Just. Pacis Dom' Regis ad prox' general' Session', &c. & quod ipse interim geret Pacem erga cunct' popul' Domini Regis, & precipue erga R. B. &c. viz. quilibet Manucapt' predicti sub pana viginti librarum. Quam quidem summam quadraginti librarum predicti I. S. & quilibet Manucaptor predicti dictam summam viginti librarum recognoverunt, &c. ut supra.

For the
Peace.

And this may be well done also by a single Recognisance in *Latin* ut supra, with a Condition added or indorsed in *English*, for the Keeping of the Peace, and for the Day and Place in the Party's Appearance at the Quarter-Sessions, as followeth.

A Condition to keep the Peace.

THE Condition of this Recognisance is such, That if the within bounden I. S. shall personally appear before the Justices of our said Sovereign Lord the King at the next general Sessions of the Peace, to be holden in the said County of *Cambr'* to answer to such Matters as shall be objected against him by R. B. within named, to do and receive that which by the Court shall be then and there enjoined him, and that he in the mean Time do keep the Peace of our Sovereign Lord the King, towards the King's Majesty and all his Liege People, and especially towards the said R. B. of C. aforesaid, Yeoman: That then, &c.

The Condi-
tion of a
Recogni-
sance for
the Peace

A Re-

A Recognisance for the Good Behaviour.

Recogni-
sance for
the Good
Behaviour.

Memorand' quod 20 die mensis Novemb. anno Regni Geor. &c. R. L. de, &c. & H. C. & I. S. de eadem, &c. in propriis personis suis vener' cor' nobis Isaaco Barrow & Roberto Haggar Armig' Just' dicti Dom' Regis, &c. Et pred' H. C. & I. S. manuceper' pro prefato R. G. & idem R. G. adtunc assumpsit pro seipso, quod idem R. G. personaliter comparebit coram Just' dicti Dom' Regis ad Pacem, &c. ad prox' general' * Session', &c. Et quod ipse interim se bene geret erga Dom' Regem & cunct' popul' suum, & precipue erga I. B. de C. &c. sc. quod ipse non inferet, nec inferri procurabit, per se nec per alios, damnum aliquod seu gravamen prefato I. B. seu alicui de populo ipsius Dom' Regis, de corporibus suis per insidias, insultus, seu aliquo alio modo, quod in lesionem seu perturbationem Pacis dicti Dom' Regis cedere valeat quovis modo, viz. uterque pred' H. S. & I. S. Lib. Intr. sub pana cent' librar' & pred' R. G. sub pana ducent' librar'. Quas⁴⁶³ quidem separales summas cent' librar' uterq; pred' H. C. & I. S. (ut predicatur) per se, ac pred' R. C. pred' summam ducent' librar', recognoverunt se debere dicto Dom' Regi, de terris & tenementis, bonis & catallis suis, & quorumlibet ac cujuslibet eorum, ad opus ipsius dicti Dom' Regis fieri & levari, si contingat prefat' R. G. in aliquo premissor' deficere, & inde legitimo modo convinci. Dat. &c.

* See the
Recog.
for the
Peace.

Or thus for the Good Behaviour.

Cantab.

Another for
the Good
Behaviour.

Memorand' quod 10 die mensis Julii, anno Regni Georgi, &c. N. G. de, &c. in propria persona sua venit coram nobis Isaaco Barrow & Roberto Haggar Armigeris, Just' dicti Dom' Regis ad Pacem in dicto Com' conservand' assign', & assumpsit pro seipso sub pana 200 l. & H. C. & I. S. de eisd' Villa & Com' Husbandmen tunc & ibidem propriis personis suis similiter venerunt, & manuceperunt pro prefato N. G. viz. uterq; eorum separatim sub pana cent' librar', quod idem N. G. personaliter comparebit coram Just' dicti Dom' Regis ad Pacem, &c. ad prox' general' Session' Pacis in Com' pred' tenend', ad faciend' & recipiend' quod ei per Cur' tunc & ibidem injungetur: Et quod ipse interim se bene geret erga Dom' Regem & cunct' popul' suum, & precipue erga I. B. de C. &c. sc. quod ipse inferet, nec inferri procurabit, per se nec per alios, damnum aliquod seu gravamen prefato I. B. seu alicui de populo ipsius Dom' Regis, de corporibus suis per insidias, insultus, seu aliquo alio modo, quod in lesionem seu perturbationem Pacis dicti Dom' Regis cedere valeat quovis modo. Quas quidem separales summas, &c. ut supra.

Or by a Recognisance, with this Condition subscribed or indorsed.

Condition
of a Re-
cognisance.

THE Condition of this Recognisance is such, That if the above-bounded R. G. shall personally appear before the Justices of our Sovereign Lord the King at the next general Sessions of the Peace to be holden in the County of C. to do and receive that which by the Court shall be then and there enjoined him, and that in the mean

Time he be of Good Behaviour, and do keep the Peace of our said Sovereign Lord the King, towards his Majesty and all his Liege People, that then, &c.

Or thus:

Conditio Recognitionis præd talis est, Quod si præd N. G. imposter se bene geret, & Pacem Dom' Regis conservabit erga dict' Dom' Regem, & cunct' popul' suum, quod tunc Recognitio præd pro nullo teneatur, alioquin in suo robore permaneat.

Or thus:

Lamb. 125. Lib. Intr. 454. **C**onditio Recogn' præd talis est, Quod si præd N. G. imposter se bene geret, & Pacem Dom' Regis conservabit erga dict' Dom' Regem, & cunct' popul' suum, & precipue erga L. B. de, &c. & nullum damnum corporale, nec aliquid quod in lesionem Pacis Dom' Regis cedere valeat, præfato L. B. seu alicui de populo ipsius Dom' Regis, faciet quoquo modo, extunc Recognitio præd pro nullo teneatur, alioquin in suo robore permaneat.

33 H. 8. c. 39. Note, That all Bonds, Obligations and Recognizances, that shall be taken by any Justice of Peace (or any other Person) for any Cause touching the King, must be made and taken in his Name, and by these Words, *Domino Reg'*, &c. See hereof *anted*, tit. *Surety for the Peace*, and *Recognisances*.

Also note that the Recognisance runneth, *De terris & tenementis, bonis & catallis*, &c. *fieri & levare*, &c. And yet the King may be at his Election, to take the Execution of the Bodies of the Recognitors (as well of the Principal as of the Sureties) or of their Lands and Chattels, (for the Sum in the Recognisance contained). *Per Curiam* 7 Hen. 4. 34. a. *Vide antea*, tit. *Surety for the Peace*.

And it seemeth by the Common Law, before the Stat. of 33 H. 8. 39. in all Cases where a Man is a Debtor to the King, as well his Body as his Lands and Goods are liable to the King's Execution: For *Theſaurus Regis est Pacis vinculum, & Bellorum nervi*: And therefore the Law doth give to the King full Remedy for it. See *Coke* 3. 12. b. & *Coke* 11. 93. a.

A Recognisance to give in Evidence against a Prisoner.

Cantab. **M**emorandum, quod 20 die Martii, anno Regni Dom' nostri Georgii, Dei gratia, Angliæ, Scotiæ, Franciæ & Hiberniæ Regis, Fidei Defensoris, decimo, &c. R. T. de C. in Com' præd Yeoman, venit coram me Ro. Th. Armig' uno Justic' dict' Dom' Reg' ad Pacem in Com' præd. conservand' assignat' & cognovit se debere dicto Domino Regi quinq; libr' legalis monete Angliæ, sub conditione, quod si ipse personaliter comparebit coram Just' dicti Dom' Regis ad prox' generalem Gaule delib' in Com' præd tenend' adtunc & ibid' ostendend' in Evidenc' secund' form' Stat' vers. D. F. nuper de W. in Com' præd qui modo attach' & suspect' Feloniæ Gaule dicti Dom' Regis Com' præd commissus existit; quod tunc, &c. alioquin, &c.

K k k k

Qr

Or this may be done by a single Recognisance, with a Condition endorsed, as followeth, which is the most usual Course.

A Condition to prefer a Bill of Indictment, and to give in Evidence against a Prisoner.

Condition of a Recognisance to appear and give Evidence against a Felon.

THE Condition of this Recognisance is such; That whereas one *A. B.* of *G.* Labourer, was this present Day brought before the Justice by the within bounden *D. E.* and was by him charged with the felonious Taking of twenty Sheep of the Goods of him the said *D.* and thereupon was committed by the said Justice to the common Gaol: If therefore he the said *D. E.* shall and do at the next general Gaol-delivery (to be holden in the said County) prefer, or cause to be preferred, one Bill of Indictment of the said Felony against the said *A. B.* and shall then also give Evidence there concerning the same, as well to the Jurors that shall then inquire of the said Felony, as also to them that shall pass upon the Trial of the said *A. B.* that then, &c. or else to stand in full Force for the King.

Or thus, to give in Evidence.

Another. **T**HE Condition of, &c. That if the above-bounden *D. E.* do at the next general Sessions, &c. pursue and give such Evidence as he knoweth, against *A. B.* now Prisoner in the Castle of *C.* concerning certain felonious Acts by him committed: Then, &c.

A Condition to appear before the Justices of Peace at their next Sessions.

Condition of a Recognisance to appear at next Sessions.

Conditio istius Obligationis talis est: Quod si *A. W.* de, &c. Spinter, in propria persona sua compareat coram Justic' Domini Regis de Pace in Com' *C.* conservand' assign' (necnon ad, &c.) ad prox' Session' Pacis dicti Domini Regis in Com' pred' tenend' ad respondend' tam dicto Domino Regi quam *G. S.* de Placito Transgressionis & Contemptus, contra formam Statuti, quod tunc presens Obligatio vacua & pra' nullo habeat' & si predict' *A.* contra premissa seu eor' aliquod in futur' fecerit, quod tunc presens Obligatio in omni suo robore stet & effectu.

Or thus:

Another Condition to appear at the Sessions.

THE Condition of this Recognisance is such; That if the within bounden *A. W.* shall make his personal Appearance before his Majesty's Justices of the Peace at the next Quarter-Sessions of the Peace to be holden for the said County of *Cambridge*, then and there to answer unto such Matters as on his Majesty's Behalf shall be objected against him (by *A. B.* of, &c. or concerning, &c.) and shall also stand to and abide such farther Orders as the said Court shall award therein; that then, and from thenceforth this present Recognisance shall be void, or else to remain in full Force and Virtue.

Another

Another for him that hath dangerously hurt one.

THE Condition of this Recognisance is such; That whereas the within bound *R. W.* hath now lately dangerously hurt one *I. T.* of *F.* within the said County of *Cambridge*, Yeoman, giving him divers Blows on the Head, Face, and Left-side, with a Bill, so as the said *I. T.* is in Danger thereby: If therefore the said *R. W.* shall personally appear before his Majesty's Justices at the next general Gaol-delivery to be holden in the said County of, &c. then and there to answer unto the Premises, and to do and receive that which by the Court shall be then and there enjoined him, and that he the said *R. W.* in the mean Time do keep the Peace of our said Sovereign Lord the King, towards the King's Majesty, and all his Liege People, that then, &c.

Condition for one to appear who hath wounded another.

A Condition for Alehouse-keepers.

THE Condition of this Recognisance is such: Whereas the within-bounden *A. B.* is admitted and allowed by the within-named Sir *I. Reynolds* and *Michael Dalton* Esquires, (two of his Majesty's Justices of Peace within the County of *Cambridge* within written) to keep a common Alehouse or Tippling-house, and to use common Selling of Ale or Beer, only within the now House of him the said *A. B.* (and not elsewhere) situate in the High Street of the Town of *M.* within written, and called *The Sign of the Hart*: If therefore he the said *A. B.* during such Time as he shall keep such common Alehouse there, shall not suffer any unlawful Play at Tables, Dice, Cards, Tennis, Bowls, Quoits, Loggets, or other unlawful Games to be used in his said House, or in his Garden, Orchard, or other his Ground or Place, (especially by Mens Servants, Apprentices, common Labourers, or idle Persons); nor willingly admit or receive into his said House, or any Part thereof, any Person notoriously defamed of or for Theft, Incontinency or Drunkenness, or that shall be beforehand notified to him the said *A. B.* by the Constable of *M.* aforesaid, for the Time being, or by his Deputy, to be an unmeet Person to be received into a common Alehouse; nor shall keep or lodge there any strange Person above the Space of one Day and one Night together, without Notice thereof first given to the Constable or his Deputy there; and finally, if he the said *A. B.* during all the Time that he shall keep common Selling of Ale or Beer in the said House, shall and do there use and maintain good Order or Rule: Then this present Recognisance to be void, &c. or else, &c.

This or the like Form hath heretofore been allowable for Keeping a common Alehouse.

Or where the Justices of Peace at their Meeting take divers such Recognisances, they were made shortly, as followeth:

Memorandum quod die Aprilis, an' Reg' Dom' nost' Georgii, &c. nobis Ed. P. Mil' & Bar' & H. V. Arm' duobus Justiciariis &c. venerunt A. B. de New-Market in Com' pred' Victualler, & cognovit se debere dicto Dom' Regi iol. & C. D. de, &c. & E. F. de, &c. interq; eorum recognovit se debere dicto Domino Regi sibi bona & legalis moneta Angl', de bonis & catallis terris & tenem' suis fieri & levare, ad opus, &c. si defecerit in Conditione sequente.

This is now the most usual Form.

The Condition of this Recognisance is such; That if, &c. (and write the Condition at large).

G. H. de New-Market in Com' pred' Victualler, & cognovit se debere dicto Dom' Regi x l. & I. K. de, &c. & L. M. de, &c. uterq; eorum recog. se debere dicto Domino Regi v l. &c.

Sub Conditione, ut supra.

N. O. de New-Market in Com' pred' Victualler, & cognovit se debere dicto Dom' Regi x l. Et P. Q. de, &c. & R. S. de, &c. uterq; eorum recog. se debere dicto Domini Regi v l. &c.

Sub Conditione, ut supra.

T. F. de Soham in Com' pred' Victualler, & cognovit se debere dicto Dom' Regi x l. Et W. W. de, &c. & I. S. de, &c. uterq; eorum recog. se debere dicto Domino Regi v l. &c.

Sub Conditione, ut supra.

Et sic de ceteris.

For the Matter of this Condition for Alehouse-keepers, it is (by the Statute) partly referred to the Discretions of such Justices of Peace as take such Recognisance or Bond, as you may see before it, *Tit. Alehouses.*

And in some Shires the Justices of Peace did condescend, and agree upon certain Articles framed by their Discretions, and generally to be propounded to all common Ale-sellers, taking their Bond for the Performance of the same Articles, a Copy whereof they did use to deliver to every of them: Which Manner was also allowed.

Amongst Articles of this Kind I did commend to the Justice's Care these Three especially.

First, That no Alehouse-keeper upon the Sabbath-day should receive or suffer to remain any Person whatsoever (as their Guests) in any their Houses, or other Places, to tittle, eat or drink; other than Travellers, and such as come upon necessary-Business.

Secondly, That they suffer no Person whatsoever, resorting to their Houses only to eat or drink, to remain there after Nine of the Clock in the Evening, from *Michaelmas* till *Lady-day*; or from *Lady-day* till *Michaelmas*, after Ten of the Clock at Night.

Thirdly, That they suffer no Person, resorting to their Houses only to eat and drink, to remain tippling there above one Hour, other than Travellers.

But note, that now there be divers Articles of far better Directions, published (touching Alehouses) by Proclamation given by the King's Majesty at *New-Market*, the 19th Day of *January*, in the 16th Year of his Majesty's Reign of *Great Britain, France and Ireland, Anno Dom. 1618.* in Manner and Form following:

I. That the Justices of Peace of every County, City, or Town Corporate within this Kingdom, and the Dominion of *Wales*, do once every Year, in the Months of *April* and *May*, assemble themselves, either at a special Sessions, or such other Meeting as they shall appoint for that Purpose, (respecting the Ease and Convenience of the People of the County) and there call before them, or any Two of them, (whereof one to be of the *Quorum*) all such Persons as do sell Ale or Beer by Retail in any Place (as well within Liberty as without) within such County,

County, City or Town Corporate; and then and there to take true Certificate and Information from Men of Trust, who be Persons of honest Conversation, and who not; and to give Licence to such Persons as they in their Discretions shall think meet to keep common Alehouses or Victualling-houses, within the Places where such Persons shall dwell.

II. That in the Licencing of the said Victuallers and Alehouse-keepers, the Form of the Recognisance hereafter following, and the Condition thereunto annexed, be used, and none other.

Memorandum quod 26 die Febr. anno Regni Domi nostri Georgii, Dei gratia, Angliæ, Scotiæ, Franciæ & Hiberniæ Regis, Fidei Defensoris, &c. coram T. P. & H. D. Armigeri Justiciarii dicti Domini Regis ad Pacem in Comitatu predicto conservandam assignati, &c. A. B. de, &c. & C. D. de, &c. manuceperunt pro W. St. de, &c. Victualler, viz. uterque Monachi predicti sub pena quinq; librarum & predicti W. St. assumpsit pro seipso sub pena 10 librarum quas concesserunt se debere dicto Domini Regi, &c. sub Condit. sequenti.

This is likewise an usual Form for a Recognisance of an Alehouse-keeper, with the Condition as followeth.

THE Condition of this Recognisance is such: That whereas the above (or within) bounden A. B. is allowed by the said Justices to keep a common Alehouse and Victualling-house for the Space of one whole Year next ensuing the Date hereof, and no longer, in the House where he now dwelleth, at C. in the County of S. and not elsewhere in the said County: If therefore the said A. B. shall not, during the Time aforesaid, permit or suffer, or have any Playing at Dice, Cards, Tables, Quoits, Loggets, Bowls, or any other unlawful Game or Games, in his House, Yard, Garden or Back-side; nor shall suffer to be or remain in his House any Person or Persons (not being his ordinary household Servants) upon any Sabbath-day or Holy-day, during the Time of Divine Service or Sermon; nor shall suffer any Person to lodge or stay in his House above one Day and one Night, but such whose true Name and Surname he shall deliver to some one of the Constables, or in his Absence to some one of the Officers of the same Parish the next Day following (unless they be such Person and Persons as he or she very well knoweth, and will Answer for his or their forth-coming;) nor suffer any Person to remain in his or her House tippling or drinking contrary to the Law, nor yet to be there tippling or drinking after Nine of the Clock in the Night-time; nor buy or take to pawn any stolen Goods, nor willingly harbour in his said House, or in his Barns, Stables, or elsewhere, any Rogues, Vagabonds, sturdy Beggars, masterless Men, or other notorious Offenders whatsoever; nor suffer any Person or Persons to sell or utter any Beer or Ale, or other Victual, by Deputation, or by Colour of his or her Licence: And also, if he shall keep the true Assize and Measure in his Pots, Bread, and otherwise, in his Uttering his Ale, Beer and Bread, and the same Beer and Ale sell by sealed Measure, and according to the Assize, and not otherwise; and shall not utter or sell any strong Beer or strong Ale above a Penny the Quart, and small Beer or small Ale above a Half-penny the Quart, and so after the same Rates; and also shall not utter, nor willingly suffer to be uttered, drunk, taken or tippled, any Tobacco within his said House, Shop, Cellar, or other Place thereunto belonging. That then, &c.

All this is now omitted.

Note,

Note, That the whole Sabbath-day being holy, Tippling at the Alehouse at any Time of the Day must needs be a Prophanation of the Day, and therefore meet to be inserted into this Condition.

3. That every Alehouse-keeper and Victualler, so to be licensed, do enter into Recognisance with two able Sureties, to be bound in 5 *l.* a-piece, and the Principal 10 *l.* at the least, for the Performance of the Condition of the said Recognisance, which shall endure but for one whole Year, and then determine, unless it shall seem fit to the Justice of Peace to renew the same again, by Taking a new Recognisance of the same Condition: And whatever Date the Recognisance shall have, it is to endure but until the said Months of *April* and *May*, or one of them.

4. That the Clerks of the Peace, Town-clerks, or other Deputies respectively, be called to attend the Justices of Peace at such their Meetings or Assemblies; and that they do there take the Recognisance aforesaid of every Victualler or Alehouse-keeper licensed, and do duly enter them amongst the Records of the Sessions of the Peace in their Charge, whereby his Majesty may be duly answered of the Forfeitures that shall be made of the Parties so bound:

5. That the Clerks of the Peace, and Town-clerks aforesaid, or their Deputies, shall, within some convenient Time after the Taking of the said Recognisance, fairly engross the Recognisance and Condition in Parchment, which they shall keep as the Original, and send a true Copy of the said Recognisance, examined with the said Original, to every Alehouse-keeper allowed, whereby he may the better inform himself what he and his Sureties are bound to observe:

6. That the Clerks of the Peace, and Town-clerks, or their Deputies, do write out, and bring with them to every Sessions of the Peace, or other Meeting of the Justices, a Register-book containing the true Names, Surnames and Places where every Alehouse-keeper or Victualler that is licensed, doth dwell, to the End it may appear to the Justices of the Peace who be licensed, and by whom, and who be not, and what other Alterations have been from Time to Time, for the Placing of Men of honest and good Conversation, and Displacing of others of ill Behaviour.

7. That the Clerks of the Peace, and Town-clerks, and their Deputies, may take of every Alehouse-keeper for their Fee, for performing of the Services aforesaid, at the Time of the Acknowledgment of the said Recognisance, the Fee of 18 *d.* and no more, over and above the Fee of 12 *d.* allowed for the Justices Clerks by the Statute, which shall be paid to the said Justices Clerks.

8. That in Case the Alehouse-keeper, not knowing of the Justices Meeting, or being hindered by Sicknes, or other such like Impediment, shall fail of Admittance at the general or publick Assemblies, and shall notwithstanding be admitted or licensed by two Justices of the Peace, (whereof one to be of the *Quorum*) the Recognisance with the Condition fair engrossed in Parchment in the Form prescribed, as aforesaid, shall forthwith, or at the next Sessions at the farthest, be returned to the Clerks of the Peace, or the Town-clerks respectively, under the Hands of the Justices before whom such Recognisance was taken, together also with the said Fee of eighteen Pence for the Entering, Registering, Making and Delivering a Copy under his Hand to the Alehouse-keeper, as aforesaid.

9. That

9. That none be licensed or allowed to keep an Alehouse that hath not one convenient Lodging at least in his or their Houses, for the Lodging of any Passenger or Traveller, and hath not always in his or their House good and wholesome small Beer or Ale, for the Relief of the Labourer, Traveller, or others that call for the same.

10. That the Justices of Peace within their several Precincts do not permit or suffer any unlicensed Alehouse-keeper or Victualler to sell Beer or Ale, but that they proceed against them by all due and lawful Means whatsoever; and that they be very careful, from Time to Time, to cause the Brewers to be proceeded against in their General and Quarter-Sessions, for delivering Beer or Ale to such unlicensed Persons, according to the Statute in that Case provided.

11. That the Clerks of the Peace, or Town- clerks respectively, do once every Year, in *Trinity-Term*, make and bring in a Brief of all such Recognisances as shall be taken within every County, City and Town-Corporate, into the Office of the Patentees, (appointed by them for that Purpose) to the End all Concealments of Recognisances taken in that Behalf may be discovered, and the Benefit accruing to his Majesty, by such as wilfully break the same, may be more duly prosecuted; of which that his Highness be not defrauded, order is given to the Patentees, that with the Allowance of the Chief Justice of the King's Bench there be appointed Committees in every County for the Recovery thereof from Time to Time.

* This is now dis- used.

12. That the Justices of Assize in their Circuits, and Justices of Peace at their general Sessions of the Peace, do from Time to Time, enquire of the due Execution of these Presents, and of all other Abuses, Disorders, and Misdemeanours whatsoever, committed or suffered against the Provisions aforesaid, and the true Meaning of them.

And yet the Means (as I conceive) to reduce them both to a more competent Number, and to better Order, would be by a Law to be made, that none should be licensed to keep any Alehouse, unless they did find two good sufficient Sureties (one of them at least to be a Subsidy-man) to be bound for Performance of the Condition of their said Recognisance.

C H A P. CLXXVII. *Vide* CXXIV.

A Licence to keep an Alehouse.

Cambr. **J**ohn Cutts Knight, and Michael Dalton Esq; two Justices of the Peace of our Sovereign Lord the King for the County of C. send Greeting. Know ye, that we the said Justices, of good and credible Report to us made by divers credible and honest Persons, &c. that *I. W.* of, &c. is a Man fit to keep a common Alehouse in the House where he now dwelleth, have licensed, allowed, and admitted, and by these Presents do licence, allow and admit the said *I. W.* to keep a common Alehouse or Tippling-house at *L.* for one whole Year next ensuing the Date hereof, so that the said *I. W.* suffer not any unlawful Games to be used in his said House, nor any Disorder to be kept within the same, during the Time of his said Licence: For

Licence to keep an Alehouse.

For the using of which Licence accordingly, we have bound the said *I. W.* in 10*l.* and two other sufficient Sureties in an Hundred Shillings apiece by Recognizance to the King's Majesty's Use. In Witness whereof we have hereunto set our Hands and Seals. Dated, &c.

Or thus.

Cambr.
Another.

J. *C.* and *M. D.* two Justices of the Peace of our Sovereign Lord, &c. to all Bailiffs, Constables, and other the King's Majesty's Officers, Greeting. Know ye, that we the said Justices have licenced, and by these Presents do licence *I. W.* of, &c. to keep a common Alehouse in *L.* aforesaid for one whole Year next ensuing the Date hereof, and have bound the said *I. W.* by Recognizance, with Sureties to his Majesty's Use, that he shall maintain good Order, and farther to do and behave himself therein in all Things according to the Laws and Statutes of this Realm, &c.

Or thus.

Cambr.
Another,
and the
most com-
mon and
usual Form

WE whose Names are here underwritten, Justices of the Peace of our Sovereign Lord the King within the County of *Cambridge*, do licence and allow *I. W.* of *L.* in the said County to keep a common Alehouse or Tippling-house in *L.* aforesaid, for and during one whole Year next ensuing the Date hereof, so as he doth not suffer any unlawful Games to be used in his House, nor any evil Rule to be kept there, but doth behave himself therein according to the Laws and Statutes of this Realm in that Behalf made and provided. In Witness, &c.

A Licence to brew and keep an Alehouse.

Cambr.
Another.

WHereas *A. M.* of *W.* in the County of *C.* Husbandman, hath come before us, *John Cutts* Knight, and *Tho. Chicheley* Esq; two of his Majesty's Justices of Peace for the said County, and bound himself in a Recognizance with sufficient Sureties, to brew and sell, and keep a common Alehouse, according to the Statute made in the fifth Year of the Reign of our late Sovereign Lord King *Edward 6.* Now know ye, that we the said *John Cutts* and *T. Chicheley*, have licenced the said *A. M.* to brew, sell, and keep a common Alehouse according to the said Statute. Given under our Hands the 13th of *July*, in the, &c.

West. 354

A Licence for a Recusant to travel, &c.

Cambr.
Licence for
a Papist to
travel a-
bout five
Miles from
home.

WHereas *R. C.* of *L.* in the County of *C.* being a Recusant (convicted) hath confined himself to *L.* aforesaid, being the usual Place of his Abode, according to the Statute made in the 35th Year of the Reign of our late Sovereign Lady Queen *Eliz.* know ye, that we, &c. four of the King's Majesty's Justices of the Peace within the said County, do, by the Consent of the Right Reverend Father in God, *Nicholas* Lord Bishop of *Ely*, at the Request of the said *R. C.* for the Dispatch of his urgent and necessary Business, grant and give Licence to the said *R. C.* to travel out of the Precincts or

Com-

Compass of five Miles limited by the same Statute, at all Times until the first Day of November next coming; and at the first Day of November to return again to *L.* aforesaid. In Witness, &c. See *hic antea*, Tit. *Recusants*.

A Testimonial or Pass-port to travel.

Camb.

SIR Roger Millisent Knight, and Sir James Reynolds Knight, two of the King's Majesty's Justices of Peace within the said County, to all Justices of Peace, Mayors, Bailiffs, Constables, and all other his Majesty's Officers and Ministers whatsoever, send Greeting. Forasmuch as the Bearer hereof *E. P.* (*here shew the Cause of his Travel*) hath desired our Testimonial (or Licence) for his safe Travel unto the City of *B.* where (*here shew whither he is to go*): In Consideration thereof, know ye, we the said Sir Roger Millisent and Sir James Reynolds, so far as in us lieth, have licensed the said *E. P.* to pass and travel the direct Way from *H.* within the said County of *C.* where he lately dwelt, unto the said City of *B.* so as his Journey be not of longer or farther Continuance than twenty Days next after the Date hereof; desiring you and every of you not to molest or trouble the said poor Man in his Travel, but to permit and suffer him peaceably to pass, so as he shew himself in no Respect offensive to his Majesty's Laws. In Witness, &c.

But upon such Licence, the Persons thus licensed to travel may neither beg, nor wander idly, nor out of their direct Way. Besides the Justices must be sparing to grant such Licences, except in Cases of Necessity. For except the Persons so licensed be one that hath suffered Shipwreck, or a Soldier, or a Mariner coming from the Seas, &c. *hic cap.* or be a Labourer, and only for Hay or Harvest Time, or else be a Servant departing from his Master, *hic cap.* the Justices of Peace are to make no such Licence or Testimonial. And as for the Manner of such Testimonial or Licence for the Persons suffering Shipwreck, and Soldiers coming from Sea, and in what Manner such Persons may travel. See *hic antea*, Tit. *Rogues*.

But in other Cases where any Person shall become poor, lame, blind, or otherwise diseased, or decayed, and shall have just Cause to travel, they must be provided of Money or Maintenance for their Travel: Otherwise the Justices ought to forbear to grant any such Licence, and must rather cause them to be sent to, and settled in the Town where they last dwelt.

Also it is fit that such Person do get the Allowance of such his Passport under the Hand of a Justice of Peace in every County where he is to pass.

The Form of a Testimonial for the Conveying of a Rogue that hath been punished according to the Statute of 39 El. c. 4.

Camb.

JOHAN a-Stile, a sturdy vagrant Beggar, (of low Personage, red-haired, having the Nail of his right Thumb cloven) aged about 25 Years, was the sixth Day of April, in the tenth Year of the Reign of our Sovereign Lord King George of England, &c. openly whipped at *W.* in the said County (according to the Law) for a wandering Rogue, and is ordered to pass forthwith from Parish to Parish by the Offi-

ccrs thereof, the next straight Way to *P.* in the County of *W.* where (as he confesseth) he was born, (or dwelled last by one whole Year, &c. if the Case be such) and he is limited to be at *P.* aforesaid within ten Days now next ensuing, at his Peril. Given at *West-Wrattin*, under the Hand and Seal of *M. D.* Esquire, one of his Majesty's Justices of Peace in the said County of *Cambridge*.

Directions therein.

Note, by the Words of the Statute 39 *El.* 4. such Testimonial must be under the Hand and Seal of the Justice of Peace, Constable, Headborough, and of the Minister of the Parish, or any one of them; and yet it is taken that the Justice of Peace alone under his Hand and Seal may make such Testimonial. *Lamb.* 206.

Note also, that it is needful both in this and in all other Testimonials, Certificates, and Pass-ports whatsoever, to note and specify expressly some assured Marks of the Party, as his Stature, Colour of Hair, Complexion, (if it may be) some apparent Scar, or other Note, by which he may be infallibly distinguished and known from others; lest (as is often found) both himself take the Benefit thereof, and he also communicate the Use of the same to others, in Abuse of him that made it, and of the Law in that Behalf provided.

A Testimonial for such as have suffered Shipwreck.

Norf.

*Testimoni-
al for Ship-
wreck.*

A. B. of *C.* in the County of *Norf.* Esquire, one of his Majesty's Justices, &c. to all, &c. Forasmuch as the Bearer hereof *I. S.* aged about, &c. having lately been at Sea, in a Ship called, &c. hath suffered Shipwreck, and got to land at *T.* in the said County of *Norf.* upon the 20th Day of *July* last past, as I am credibly informed, as well by the Report of the said *I. S.* as also by the Testimony of divers the Inhabitants of *T.* aforesaid) and for that the said *I. S.* hath not wherewith to relieve himself in his Travel homeward to *D.* in the County of *H.* where he saith he was born, (or hath a Dwelling, &c.) These are therefore to desire you, and every of you, to whom these Presents shall come, not to molest or trouble the said *I. S.* in his Travel to *D.* aforesaid, where he is limited to be within 20 Days next after the Date hereof; but to desire you rather to relieve him in his Necessity, as to you shall seem meet: And withal, you the Constables of every Town where he shall come, to help him with Lodging in convenient Time, so that he travelleth the direct Way to *D.* aforesaid, not doing any Thing contrary to the Laws and Statutes of this Realm. In Witness whereof, &c.

*Mariner
or Soldier.*

The like (with very little Alteration) may be for a poor Mariner, or a poor Soldier, coming from the Seas, or from beyond the Sea. *Vide antea, Tit. Rogues.*

But these two last Testimonials must be made by some Justice of Peace dwelling near where such Persons do land.

C H A P. CLXXVIII. Vide CXXV.

Warrants.

Warrant. custodi Gaolæ, ad recipiend. Prisonarium pro Felonia;

Cantab.

Edwardus Peyton Miles & Baronettus, unus Justic. Domini Regis T^o a Gaol^o nunc ad Pacem in Com. pred. conservand. necnon ad divers. Felon. Transgr. & alia malefact. in eod. Com. audiend. & terminand. assign. custodi Gaole dict. Dom. Regis in Com. pred. aut ejus locum tenenti & eor. cuilibet salut. Quia R. T. nuper de L. in Com. pred. Labourer, jam pro suspitione cujusd. Felon. per ipsum (ut dicitur) perpetrat. per Constab. Ville de R. in Com. pred. arrestat. Ideo ex parte dicti Dom. Regis vobis & cuilibet vestrum precipio, quod ipsum R. in custod. vestrum recipiatis, seu unus vestrum recipiat, ibid. moratur. quousq; secunda. Legem & consuetudinem Regni Angliæ a custod. vestra deliberetur. Dat. apud Illeham, &c.

Alias.

Cambr.

I. D. &c. to the Keeper of the Common Gaol at the Castle of Cambridge, or to his Deputy there: These are in his Majesty's Name to charge and command you, that you receive into your said Gaol the Body of R. S. late of, &c. taken by F. G. and L. S. Constables of the Town of W. and by them brought before me for Suspicion of Felony, &c. and that you safely keep the said R. S. in your said Gaol until the next general Gaol-delivery for the said County, [if he be not bailable; or if he be bailable, then thus] until he shall thence be delivered by due Course of Law. And hereof fail you not, &c.

A Mittimus of a Felon after his Examination taken.

JOHN Cotton Knight, one of the Justices &c. to the Keeper of the common Gaol at the Castle of Cambridge in the said County, &c. I send you herewithal the Body of A. B. late of C. Labourer, brought before me this present Day, and charged with the felonious Taking of twenty Sheep, (which also he hath confessed upon his Examination before me.) And therefore these are (on the Behalf of our Sovereign Lord) to command you, that immediately you receive the said A. B. and him safely keep in your said Gaol, until that he shall be thence delivered by the due Order of Law. Hereof fail you not, as you will answer for your Contempt at your Peril. Given at Chesham the first Day of December in the 10th Year of the Reign of our said Sovereign Lord George, by the Grace of God, King of England, Scotland, France and Ireland, Defender of the Faith, &c.

* This Clause maketh the Prisoner not to be bailable.

Cambr.

I have sent you herewithal the Body of E. C. of W. in the County of C. being an idle, seditious and disorderly Fellow, one that will not keep his Service, nor follow any honest Course of Life.

LIII 2

Alias.

Alias.

Or these Warrants or *Mittimus*, whereby a Prisoner shall be sent to the Gaol, may be made in the King's Name, and the *Teste* may be made under the Name of the Justice of Peace as followeth.

This is
now dis-
used.

GEORGIUS Dei grat. Angl', &c. Cust. Gaole nostre de Can-
tab. vel ejus locum tenenti salut. Quia R. S. nuper de B. in Com.
Essex Labourer, jam pro suspic. cujusdam Felonie per ipsum, ut dici-
tur, perpetrat. arrest. Ideo vobis & cuilibet vestr. precipimus, quod ip-
sum R. in custod. vestram Gaole nostre predict. recipiatis, seu unus
vestr. recipiat, ibid. moratur. quousq; secund. Legem Regni nostri
Anglie a custodia vestra deliberetur, Teste Edw. P. &c.

*A Mittimus to send to the Gaol an Alehouse-keeper that offendeth
contrary to the Command, &c.*

Cambr.
Commit-
ment of an
Alehouse
keeper for
keeping an
Alehouse
after he
was probi-
bited.

* Or to use
commonly
selling Ale
or Beer.

H. E. and R. T. Esquires, two of his Majesty's Justices of the
Peace within the said County of Cambridge, to the Keeper of the
common Gaol at C. Whereas R. D. of B. in the County of Camb.
(upon Complaint lately made unto us of the evil Rule kept and suf-
fered by him in his House, and other Misdemeanors) by War-
rant under both our Hands and Seals was discharged of his Alehouse-
keeping, and was commanded from us that he should thenceforth use
no more common Selling of Ale or Beer; and whereas we are credi-
bly informed that the said R. D. (notwithstanding our said War-
rant and Command given him to the contrary, as aforesaid) hath e-
ver since obstinately, and upon his own Authority, taken upon him
to keep a common Alehouse or Tippling-house, and still continue
the same: We do therefore send you herewithal the Body of him the
said R. D. commanding you in his said Majesty's Name to receive
him into your said Gaol, and there safely to keep him, until such
Time as he shall be from thence delivered by due Order of Law.
And hereof fail you not at your Peril. Dated at, &c.

Or Thus,

Another
Form for
the like
Commit-
ment of a
suppressed
Alehouse-
keeper.

WHereas by Warrant from divers Justices of the Peace of this
County I. S. of, &c. hath been suppressed for keeping an
Alehouse, &c. and forasmuch as Complaint hath notwithstanding been
made to us (this present Day) that the said I. S. hath and doth, con-
trary to the said Warrant, and contrary to the Statute in that Behalf
provided, still keep a common Alehouse: Therefore we do send you
herewithal the Body of the said I. S. commanding you, &c. to re-
ceive the said I. S. into the common Gaol, and there safely to keep
him for three Days without Bail or Mainprize; and afterwards until he
shall with two Sureties enter into Recognizance, that he shall not
keep any common Alehouse, or use common Selling of Ale or Beer,
and pay his Fine of 20s. according to the Statute in that Case made
and provided. Hereof fail you not, &c.

A Mittimus (to the Gaol) of the reputed Father of a Bastard-child, &c.

Cambr.

I Send you herewithal the Body of R. C. of B. in the County of C. Labourer, brought before me this present Day, and charged by F. S. of the same Town to have gotten her with Child: And for that the said R. refuseth to put in Security for his Appearance at the next Quarter-Sessions, to the End he may be forth coming when an Order shall be taken for the Relief and Discharging of the said Town of B. and for the keeping of the said Child (when it shall happen to be born) according to the Statute in that Case provided: These are therefore on his Majesty's Behalf to charge and command you, that immediately you receive the said R. C. and him safely keep in your said Gaol, until such Time as he shall be from thence delivered by due Order of Law. And hereof fail you not as you will answer your Contempt at your Peril. Dated, &c.

In every *Mittimus* the Cause of the Commitment is to be let down, to the End it may appear whether the Prisoner be bailable or no. See hereof before in the Title *Bailment*, &c.

Also where the Justices of Peace out of their Sessions may hear and determine, and so may commit Offenders for the Offence or Fine, it is necessary that in their *Mittimus* there be contained the Manner of the Offence, and how long Time the Offender is to be kept in Prison for it. See the *Mittimus* for Guns afterwards.

A Mittimus to the House of Correction, of a dangerous Rogue.

Cambr.

I, R. Knight, and Michael Dalton Esquire, two of his Majesty's Justices of the Peace within the said County of Cambridge, to the Master or Governor of the House of Correction at Bottissham, (for the East-side of the said County) or to his Deputy there: Whereas I. S. a sturdy vagrant Beggar, was the 10th Day of September, Anno Dom. &c. brought before us, and charged as well with Begging and idle wandering abroad, as also with other lewd and disorderly Behaviour, so as he appeareth to us to be dangerous to the inferior Sort of People, (or such an one as will not be reformed of his roguish Life) contrary to his Majesty's Laws in such Behalf provided: These are therefore to will and require you to receive the said I. S. and him safely keep in your said House, until the next Quarter-Sessions to be holden in the said County, and during all that Time (that he shall continue with you) that you hold him to Work and Labour, and punish him by putting Fetters and Gyves upon him, and by moderate Whipping him, as in good Discretion you shall find Cause, yielding him for his Maintenance only so much as he shall deserve or earn by his Labour, and Work; and that at the said next Quarter-Sessions you have the said I. S. there, together with this our Warrant. And hereof see that you fail not, &c. Dated, &c.

See Stat.
7. Jac.
cap. 4. &
39 ELC. 4.

A Mittimus to the House of Correction of a disorderly Servant, or other disorderly Person.

Cambr.

I Have sent you herewithal the Body of E. C. of W. in the said County of C. being an idle, dissolute and disorderly Fellow: (Or one that will not keep his Service, nor follow any honest Course of Life.)

Life.) These are therefore to will and require you to receive the said *E. C.* and him safely to keep, (* until he shall be thence delivered by Warrant from my self, or some other of his Majesty's Justices of Peace for this County of *Cambridge*) and in the mean Time to hold him to Work, and to punish him by moderate Whipping, or otherwise, according to the Law in such Cases provided. And hereof fail not at your Peril. Dated, &c. See the Statute 7 Jac. cap. 4.

Another for one that runneth away, leaving her Charge to the Town.

Cambr.
Commit-
ment of a
Mother
that run-
neth away
and leaves
a Charge to
the Parish.

Or else such
Parity must
be deliver-
ed at the
Meeting of
the Justices
upon
privy
Search
made for
Rogues,
and not o-
therwise.

Directions.

Commit-
ment of the
Mother of
a Bastard

House of
Correction.
Directions
about the
Punish-
ment.

WE have sent you herewithal the Body of *I. R.* of *W.* single Woman, being lately delivered of a Child, and one that is able to labour, and thereby to relieve her self and her Child, and hath notwithstanding lately run away, and left her Child upon the Parish, to the Charge of the same Parish, contrary to the Statute in that Behalf provided: These are therefore to will and require you to receive the said *I. R.* and her safely to keep, until the next Quarter-Sessions to be holden for this County; and in the mean Time to hold her to such Work, and to give her such due Correction, by moderate Whipping or otherwise, as shall be fitting in your Discretion, and according to the Law in that Behalf provided; yielding her for her Maintenance, &c. *ut supra*. And hereof fail not at your Peril. Dated, &c. See the Statute 7 Jac. cap. 4. & vide antea, Tit. Rogues, bis.

7 Jac. c. 4.

Note, if any mean Persons shall but threaten to run away, and leave their Family (as aforesaid) any two Justices of Peace of that Division may send them to the House of Correction, as aforesaid, but such their Threatning must be proved by two sufficient Witnesses upon Oath before the said Justice of Peace. *Vide antea*, Tit. Rogues.

A Mittimus to the House of Correction of the Mother of a Bastard Child.

WE have sent you herewithal the Body of *I. C.* of *W.* in the said County, single Woman, being lately delivered of a Bastard-child, like to be chargeable to the Parish of *W.* aforesaid: And for that the said *I. C.* is able to labour, and that thereby she may the better relieve her self and her said Child; these are therefore to will and require you to receive the said *I.* into your said House, there to be punished, and set on Work during the Term of one whole Year, according to the Statute in that Behalf provided. And hereof fail you not, &c.

Rogues and Vagabonds, sturdy Beggars, and other idle, and disorderly Persons sent to the House of Correction, are there to be punished by putting Fetters and Gyves upon them, and by moderate Whipping. 7 Jac. c. 4.

So Persons running, or threatning to run away, and leave their Family to the Parish. *Ibid*.

The Mother of a Bastard-child, &c. shall be set on work, and punished. *Ibid*.

But where by the plain Letter of the Law there is not Authority given to whip or punish Offenders, (sent to the House of Correction,) there let the Justices of Peace forbear to appoint or order any

Whip

Whipping, except it be in open Sessions, or by the Order of the Quarter-Sessions.

Note, that the greater Part of the Justices of Peace assembled at the Quarter-Sessions may set down Orders for the Correction and Punishment of Offenders committed to the House of Correction.

And the Houses of Correction are to be used and employed for the keeping, correcting and setting to work of such Persons as shall be sent thither. See Stat. 7 Jac. cap. 4. sc. generally for Rogues, Vagabonds, sturdy Beggars, and other disorderly Persons.

What other Manner of Persons are to be sent to the House of Correction: See *hic* cap. 11. the Mother of a Bastard-child like to charge the Parish; c. 20. Counterfeiters: cap. *alii*, idle and disorderly Servants; poor Children refusing to be put out Apprentices, and their Parents enticing them from their Masters, and Servants running away; such as are able to labour, and shall run away, or threaten to run away, and leave their Wives or Children to the Parish. So a Person infected with the Plague, or dwelling in an House infected, if being commanded by a Justice of Peace to keep his House, he will not. Common Trespassers in spoiling of Corn or Woods, breaking of Hedges, or robbing Orchards, &c. being mean Persons.

C H A P. CLXXIX. *Vide* CXXVI.

A Mittimus to send to the Gaol such as shoot, &c. in Guns.

To the Keeper of his Majesty's Gaol at the Castle of Cambridge, and to his Deputy or Deputies there, and to every of them.

Cantab.

Whereas this present Day *A. B.* and *C. B.* of *B.* in the same County Yeomen, did arrest and bring before me at *C.* aforesaid one *I. at S.* in the said County Mariner, whom they had seen and found the same Day shooting in a Hand-gun, charged with Powder and Pellet, at a Coney in a certain Place in *C.* within the said County called the *Churchfield*, contrary to the Laws of the Realm, and thereupon prayed that Justice may be done in that Behalf. I *John Cutts* Knight, being the next Justice of the Peace in the said County to the Place aforesaid, did then at *C.* aforesaid, upon the said Request, take the Examination of the said *I. at S.* and did also then and there hear the Proofs of them the said *A. B.* and *C. D.* touching the said Offence. And for that it did manifestly appear unto me, as well by the Testimonies of them the said *A. B.* and *C. D.* as also by the plain Confession of him the said *I. at S.* that he had not then Lands, Tenements, Fees, Annuities or Offices, to the clear Value of 100 l. and that he had shot in the said Hand-Gun in Manner and Form as aforesaid; I do send you herewithal the Body of him the said *I. at S.* as lawfully convicted of the said Offence before me, requiring you in his Majesty's Name to receive him into your said Gaol, and him there safely to keep, until he shall have truly paid the

Commitment of those who shoot in Guns, not being qualified.

The Qualification.

Forfeiture
101. the Pain and Forfeiture of 10l. of lawful Money of England, laid upon him for his said Offence by the Statute made in the three and thirtieth Year of the Reign of the late King Henry the Eighth, that is to say, The one Moiety thereof to our said Sovereign Lord, and the other Moiety to them the said A. B. and C. D. the first Bringers of him before me. And this shall be your sufficient Warrant in this Behalf. Hereof fail not as you will answer for your Contempt at your own Peril. Given at C. aforesaid, the third Day of March in the 10th Year of the Reign of our said Sovereign Lord George by the Grace of God King of England, Scotland, France and Ireland, &c. Defender of the Faith, &c.

To the King and the Sheriff of the County of ...

33 H. 8.

By me the said John Cutts.
The Justice's Record thereof.

*Cantab.
Record of
the Com-
mission.*

Memorand. quod vicesimo die Martii, anno Regni Dom. nostri Georgii, Dei gratia, Angliæ, Scotiæ, Franciæ & Hiberniæ Regis Fidei Defensor, &c. A. B. & C. D. de E. in Com. pred. Teoman, quond. I. at S. de E. in dicto Com. Mariner inveni. & viderunt apud D. in Com. pred. die & anno supradicto cum quodam tormento (Anglice vocat. a Hand-gun) onerato pulvere tormentario & globo plumbeo (Anglice charged with Gunpowder and a Leaden Bullet) in quendam cuniculum adtunc existent. in quodam loco ibidem vocato Churchfield sagittantem, & exonerantem dict. torment. contra form. Statuti in Parl. Dom. Henrici nuper Regis Angliæ octavi apud Westm. anno Regni sui tricesimo tertio tento) provisi ac editi; ac proinde die & anno supradicto prefat. I. at S. arrestaverunt, & apud D. pred. Johanne Cutts Milite, uno (& dicto loco proximo) Just. dicti Dom. Regis ad Pacem in dicto Com. conseroand. necnon ad diversas transgress. & alia malefacta in eodem Com. perpetrata audiend. & terminand. assignat. adtunc una secum adduxerunt, petentes inde justitiam fieri. Qua quodam petitione audita, ego prefat. Johannes Cutts apud D. pred. die et anno supradicto debite superinde examinavi pref. I. at S. ac probationes pred. A. B. & C. D. in hac parte cepi: ac propterea quod tam per probation. pred. quam per confession. ipsius I. at S. adtunc et ibid. apparuit mihi manifeste, quod prefat. I. at S. (cum non haberet in jure suo proprio, nec in jure uxoris sue ad usum suum proprium, nec aliqui alii ad usum ejusd. I. at S. haberent terras, tenementa, feoda, annuitates, aut officia ad clarum annum valor. cent. librar.) in tormento pred. modo & forma predictis sagittasset, contra form. Stat. pred. Ego prefat. Johannes Cutts prenominat. I. at S. die et anno supradicto proxime Gaule dicti Domini Regis apud Cantab. in Com. pred.) de Transgress. pred. cor. me convict.) commisi, ibid moratur. quousq; penam et forisfactur. decem librar. legalis monete Angliæ vere solveret, viz. unam medietat. inde dict. Dom. Regi et alter. medietat. inde dict. A. B. & C. D. primis ejusd. I. at S. cor. me ductoribus. In quor. omnium fidem & test. ego prefat. Jo. Cutts his presentibus sigill. meum apposui. Dat. apud D. pred. die et anno supradictis.

Per me prefat. Johannem Cutts.

C H A P.

C H A P. CLXXX. Vide CXXVII.

Bailment.

Memorand. quod secundo die mensis Septembris anno Regni Dom. nostri Georgii, &c. venerunt cor. nobis J. C. Milite, et R. C. Armigeri duobus Justiar. dicti Dom. Regis ad Pacem in Com. pred. conservand. assignat. (apud H. in Com. pred. A. B. & C. D. de E. in dicto Com. Teoman.) & ceperunt in Ballium usq; ad proxim. Gaole deliber. in dicto Com. tenend. quend. F. G. &c. Labourer, capt. & detent. in prisoa pro suspitione cujusd. Felonie, &c. & assumpser. super se, sc. quilibet pred. A. B. & C. D. sub pana 20 l. bone et legalis monete Angliæ et pred. F. G. assumpsit pro seipso sub pana 40 l. similis monete de bonis et catallis, terris et tenem. eor. quorumlibet et cujuslibet eor., ad opus dicti Dom. Regis, Hered. & Successor. suor. levand. si pref. F. G. ad eand. prox. Gaole deliber. personaliter non comparebit cor. Just. dicti Dom. Regis, ad dictam Gaolam deliber. assignatis, ad stand. recto de Felonia pred. & ad respond. dicto Dom. Regi tunc & ibid. de et super omnibus que illi obijcientur. Dat. sub sigillis nostris die & anno primum supradictis. Vide antea, Tit. Bailment.

Alias, sc. if the Gaoler can conveniently bring the Prisoner before the Justices.

Memorand. quod 20 die Augusti, &c. A. B. de D. &c. & E. F. de G. &c. venerunt cor. nobis M. D. & I. B. Armig. duobus Just. &c. & manucep. pro I. S. de, &c. uterq; cor. sub pana 20 l. &c. & pred. I. S. tunc & ibid. similiter assumpsit pro seipso sub pana 40 l. consimilis monete Angliæ, de bonis & catallis, terris & tenem. eor. & cujuslibet eor. ad opus & usum dicti Dom. Regis Hered. & Successor. suor. fieri & levari, si pref. I. S. defecerit in Conditione indorsata.

THE Condition of this Recognizance is such, That if the within-bounden A. B. shall make his personal Appearance before the King's Majesty's Justices of the Peace at the next general Sessions to be holden for this County, then and there to make Answer to our Sovereign Lord the King, for and concerning the Suspicion of stealing certain Corn, wherewithal he standeth charged, that then, &c.

Alias.

Memorand. quod 30 die, &c. venerunt coram nobis, &c. A. B. de, &c. & D. E. de, &c. & F. G. de, &c. & manuceper. pro R. B. de L. in Com. pred. Gen', viz. quilibet cor. corpus pro corpore, quod idem R. B. personaliter comparebit cor. pref. Just. & sociis suis Just. Dom. Regis ad prox. general. Session. Pacis in Com. pred. tenend. ad stand. recte in Cur', (si quis versus eum loqui voluerit) de diversis Feloniis & Transgr. unde idem R. B. indictatus existit (ut dicitur) & ad respond. dicto Regi de eisd. prout debet, &c. Vide antea, Tit. Bailment, that it must be upon a certain Sum of Money.

And here *Stare recte in Curia* is, when he that standeth at the Bar hath no Man to object against him.

M m m m

Yet

Yet note, upon this last Manner the Bail shall be only fined if the Prisoner maketh Default. 21 H. 7. 20. Crompt. 153.

Before the Statute of *Marl. cap. 27.* if one arrested or in Prison for Felony had been bailed, and at the Day the Prisoner would not answer, but betook himself to his Clergy, &c. then his Mainpernors, were amerced, &c. But now by the Statute, if they have the Body at the Day, they shall not be amerced; although the Prisoner will not answer, &c. Neither shall they forfeit their Recognizance, if they have the Body of the Prisoner there, although the Prisoner shall not answer, &c. and yet the Words of the Recognizance or Bailment are usually, *Ad respond. dicto Dom. Regi, &c. ut supra.* But these Words seem to be of Course.

Alias, to bail a Prisoner for the Peace.

Memorand, &c. A. B. de, &c. D. E. de, &c. & E. F. de, &c. venerunt cor. me M. D. &c. & manuceper. pro R. B. de, &c. quod ipse Pacem geret erga cunct. popul. Dom. Regis, & precipue erga I. S. sub pena cujuslibet Manucaptoris 20 l. & pred. R. B. sub pena 40 l. & quod pred. R. B. comparebit coram Just. Dom. Regis ad prox. general. Session. Pacis pro Com. pred. tenend, &c.

The Liberate to deliver a Prisoner committed for Felony.

Cantab. *A Liberate to deliver one committed for Felony.* E. F. and D. E. Esquires, two of the Justices, &c. to the Keeper Lam. 341. of his Majesty's Gaol in C. &c. Forasmuch as F. G. &c. Labourer, hath before us found sufficient Bail to appear before the Justices of Gaol-delivery, at the next general Gaol-delivery to be holden in the said County, there to answer to such Things as shall be then on the Behalf of our said Sovereign Lord objected against him, and namely to the felonious Taking of two Sheep, (for the Suspicion whereof he was taken and committed to your said Gaol:) We commend you on the Behalf of our Sovereign Lord, that if the said F. G. do remain in your said Gaol for the said Cause, and for none other, then you forbear to detain him any longer, but that you deliver him thence, and suffer him to go at large, and that upon the Pain will fall thereon. Given under our Seal this, &c.

Warrant' ad liberand' Servientem extra Gaolem.

Cantab. *A Liberate to deliver one committed for Felony.* **F**ranciscus Barkin Armig. unus Just, &c. Custodi Gaole dicti Dom. Crompt. 238. Regis in Com. pred. salut. Quia W. K. de N. Labourer, coram me inveniit suffic. Securitat. essendi cor. Just. dicti Dom. Regis ad Pacem in Com. pred. conservand, &c. ad prox. general. Session. Pacis in Com. pred. tenend. ad respond. tam dicto Dom. Regi quam E. F. de, &c. de transgr. & contemptu suis contra firm. Stat. de Servientibus nuper edit. et provis. Ideo tibi ex parte dicti Dom. Regis mando, quod pred. W. K. a prisona tua, si ea occasione, & non alia, ibid. detineatur, sine dilatione delib. fac'. Dat. &c.

Wheresoever a Justice of Peace upon his own Motion and Discretion hath committed one to the Gaol or House of Correction, for want of Sureties for the Peace or Good Behaviour, or for being a Vagrant or idle Person, or the like, it seemeth the same Justice of Peace may in like Discretion afterwards discharge him again, and make his Li-

berate or Warrant to deliver such Prisoner. See 14 H. 6. fol. 8. Br. Impr. 27.

To deliver a Prisoner committed for the Peace or Good Behaviour.

F.B. Armig. unus Just. &c. Vic. (seu Custodi Gaule) &c. Quia ^{Liberate to} J.S. in prisiona Dom. Regis in custod. tua existit, ad settam cuiusd. ^{discharge} A.S. se bene gerendo, vel pro Pace gerenda erga Dom. Regem et cunc- ^{one com-} tum populum suum, (et precipue erga pred. A.S.) invenit coram me ^{mitted for} suffic. secur. vel quatuor Manuceptores, scil. A.B. D.E. F.G. et H. J. ^{Breach of} &c. qui manucep. pro pred. J.S. quod ipse J.S. non inferet, nec infer- ^{Peace, or} ri procurabit, per se nec per alios, eidem A.S. seu alicui de populo ^{Good Be-} dicti Dom. Regis, aliquod damnum seu gravamen de corpore suo per ^{haviour.} minas, insidias, insulium, seu aliquo alio modo, quod in lesionem seu perturbat. Pacis Dom. Regis cedere valeat quovis modo, viz. quilibet eor. Manuceptor. sub pena 20l. Ideo ex parte dicti Dom. Regis tibi mando, quod pred. J.S. in prisiona Dom. Regis in custodia tua, ea occasione et non alia, existentem, indilate delib. fac. Dat. &c.

C H A P. CLXXXI. Vide CXXVIII.

Releases of the Peace.

The Release of the Justice of Peace.

EGO pref. H. Martin, qui supranominat. A.B. ad pred. secur. Pa- ^{Release of} cis inveniend. ex mea discretionem compuli, eandem secur. Pacis ^{the Peace.} (quantum in me est) ex mea discretionem 1 die Aug. &c. remisi et relaxavi. In cujus rei testimon. huic presenti Relaxationi mea sigillum meum apposui. Dat. die et anno supradictis.

The Release of the Party before the same Justice that took it.

Cantab.

Memorand. quod primo die Aug. &c. pref. E. F. venit coram me ^{Another} Roger Thornton, et gratis remisit et relaxavit (quantum in se ^{Form.} est) pred. secur. Pacis per ipsum coram me versus supranominat. A. B. petitam. In cujus rei testimon. ego pref. Roger. Thornton sigill. meum apposui. Dat. &c.

These two former Releases are to be written under the Recognizance it self: And if the Justice shall only subscribe his Name to the Release without his Seal, it is well enough, (especially where the Recognizance is without Seal).

Or the Release of the Party may be by it self in this Form, scil.

Cantab.

Memorand. quod E. F. de S. in Com. pred. Yeoman, 1 die Aug. ^{Another} anno regni Dom. nostri, &c. venit coram me Isaaco Barrow ^{Form.} mig. uno Just. dicti Dom. Regis ad Pacem in Com. pred. conservand. assign. apud W. in Com. pred. & ibidem remisit & gratis relaxavit

M m m m 2

R. W.

R. W. de S. in Com' pred' Labourer, secur' Pacis per ipsum E. F. versus dictum R. W. coram me petitam. Dat' die & anno supradictis.

And if the Release be made before another Justice which took not, or hath not the Recognizance, it may be thus.

Cantab.

Memorandum quod A. B. de E. in Com' pred' Yeoman, 1 die Aug. &c. venit coram me Rob. Haggard Armig. uno Just' dicti Dom' Regis ad Pacem in Com' pred' conservand' assign' (apud W. in Com. pred.) & secur' Pacis quam habet versus J. S. de, &c. penitus remisit & relaxavit. Dat' die & anno supradictis.

But Note, that none of these Releases will discharge the Recognizance, or the Appearance of the Party bound thereby, but that he must appear according to the Condition of the Recognizance for the Safeguard of the Recognizance. See *hic c.*

Release for the Good Abearing.

Release of
the Good
Behaviour.

Mr. Lambert seemeth to Doubt whether the Surety of Good Abearing may be released by the Party, (because it seemeth more popular than the Surety of the Peace.) But others do hold that it may be released; and then may the Form of such Release be easily made by those which are before concerning the Peace, using the Words *Securitatē de se bene gerendo* instead of the Words *Securitatē Pacis*. But notwithstanding such Release, it shall be safe also for the Party bound to appear according to the Recognizance.

Lamb.
126.
P. R. 22.

Indentures for Apprentices.

Inden-
tures of
poor Ap-
prentices.

THIS Indenture made the 20th Day of February, &c. witnesseth that A. B. C. D. and E. F. Overseers for the Poor in the Town of H. in the County of C. and I. S. Church-warden of the same Town, by and with the Consent of Sir I. M. Knight and M. D. Esquire, two of his Majesty's Justices of the Peace for the County of Cambridge, have by these presents put, placed and bound I. H. (being a poor fatherless and motherless Child) as an Apprentice with R. W. of H. aforesaid Baker, &c. and as an Apprentice with him the said R. W. to dwell, from the Day of the Date of these Presents, until the said I. H. shall come to be of the Age of 24 Years, (if it be a Woman, then until her Age of 21 Years, or the Time of her Marriage) according to the Statute in that Behalf provided. By and during all which Time and Term the said I. H. shall the said R. W. his Master, well and faithfully serve in all such lawful Business as the said I. H. shall be put unto, according to his Power, Wit, and Ability; and honestly and obediently in all Things shall behave himself towards his said Master, his Wife and Children, and orderly and honestly towards all the Rest of the Family of the said R. W. And the said R. W. for his Part promiseth, &c. the said I. H. in the Craft, Mystery and Occupation the which he useth, after the best Manner that he can or may, to teach and inform, or cause to be taught and informed, as much as thereunto belongeth, or in any wise appertaineth: And also during all the said Term to find unto the said Apprentice

prentice Meat, Drink, Linen, Woollen, Hose, Shoes, and other Things needful or meet for an Apprentice, &c. In Witness whereof, &c.

In this Indenture may also be added other the usual Covenants for Apprentices, which see *lib. Intr. verbo Covenant, in Apprentices, and West. 381.*

C H A P. CLXXXII. Vide CXXIX.

Forcible Entry.

The Form of the Record of a Forcible Entry by the Justice upon his View.

Cantab.

Memorandum quod 8 die mensis Januar. Anno Regni Domi nostri Geor. &c. questus est mihi Johanni Cotton Militi, uni Justiciar; dicti Domini Regis ad Pacem in dicto Comitatu conservand: assignat. quidam A. B. de W. in dicto Comitatu Yeoman, quod C. D. de W. pred. & nonnulli alii Pacis dicti Dom. Regis perturbatores ignoti, in domum mansionalem ipsius A. B. in W. pred. manu forti ingressi sunt, & ipsi A. B. disseverunt, ac ead. manu forti & armata potentia adhuc tenent, ac proinde petiit a me sibi in hac parte remedium apponi. Qua quidem queremonia & petitione audita ego prefatus Johan. Cotton immediate ad dictam domum mansionalem personaliter accessi, ac in eadem domo adtunc inveni prefatum C. D. & quosdam E. F. & G. H. &c. domum illam vi & armis, manu forti & armata potentia, (viz. arcubus & sagittis, gladiis, pugionibus, galeis & loriciis) tenentes, contra formam Statuti in Parlamento Domini Richardi nuper Regis Angliæ secundi, anno regni sui decimo quinto tento, provisum, & contra formam diversorum aliorum Statut. At propterea ego pref. Johan. Cotton pred. C. D. E. F. & G. H. adtunc & ibidem arrestavi, proximeque Gaule dicti Dom. Regis apud Castrum Cantab. in dicto Comitatu duci feci, ut de dicta manu forti retenzione per visum & recordum meum convictos, ibidem moratur. quousque Fines dicto Dom. Regi pro transgress. suis pred. fecerint. Dat. apud W. pred. sub sigillo meo, die & anno supradictis.

15 R. 2.

The Form of the Mittimus (to the Gaol) of such as hold Land by Force.

Cambr.

John Cotton Knight, one of the Justices of the Peace of our Sovereign Lord the King within his said County of Cambridge, to the Keeper of the Common Gaol at, &c. in the said County, and to his Deputy and Deputies there, and to every of them. Whereas upon Complaint made unto me this present Day by A. B. of Weston in the said County, Yeoman, I went immediately to the dwelling House of the said A. B. of Weston aforesaid, and there found C. D. E. F. and G. H. of D. aforesaid Labourers, forcibly and with strong Hand and armed Power holding the said House, against the Peace of our Sovereign Lord, and against the Form of the Statute of Parliament thereof made in the fifteenth Year of the late King Richard the second: Therefore I send you (by the Bringers hereof) the said C. D. E. F. and

and G. H. convicted of the said forcible Holding by mine own View, Testimony and Record; commanding you in his Majesty's Name, to receive them into your said Gaol, and there safely to keep them, until such Time as they shall make their Fines to our said Sovereign Lord for their said Trespases, and shall be thence delivered by the Order of Law. Hereof fail you not, upon the Peril that may follow thereof. Given at *Weston* aforesaid, under my Seal, the Day and Year abovesaid.

The Form of a Precept (to the Sheriff) to return a Jury for an Inquiry.

Cantab. *Johannes Cotton Miles, unus Justiciar' Domini Regis ad Pacem in Com' Cantabr' conservand' assign' Vicecomiti ejusdem Comitatus salutem. Ex parte dicti Domini Regis tibi mando & precipio, quod venire facias coram me apud Balsbam in Com' pred' vicesimo die Septem. proxime futur' 24 probos, sufficientes, & legales homines de vicineto de Weston in Comitatu' pred' quor' quilibet habeat 40 solid' terrar' & tenementor' vel red' per annum ad minus ultra reprisas, ad inquirend' sup' Sacrament' suum pro dicto Domino Rege de quodam Ingressu manu forti facto in messuag' cujusd' A. B. apud Weston pred' contra form' Stat' in Parliam' Dom' Hen' nuper Regis Angliæ sexto, anno Regni sui octavo tento, editi, ut dicitur. Et videas quod super quemlibet Furator' per te in hac parte impanelland' viginti solidos de exitibus ad prefat' diem retournes. Et hoc nullatenus omittas sub pana viginti librar' quam noveris te incursum si in executione premissor' remissus fueris: Et habeas ibi tunc hoc Precept'. Teste me pref. Johanne Cotton, decimo die Martii, anno Regni Domini nostri Geor. Dei gratia, Angliæ, Scotiæ, Franciæ & Hiberniæ Regis, Fidei Defensor, &c.*

8 H. 6.

Directions.

Note, When the Justices of Peace are to enquire upon the Statute of 8 H. 6. (or any other Statute) they make their Precept to the Sheriff, to return before them Panels to enquire for the King (generally) of such Things as shall be enjoined them on the King Majesty's Behalf, without saying, to enquire of a Forcible Entry, or of a Riot, &c. *Crompt. 123.*

The Form of the Enquiry, Presentment, or Verdict of the Jury.

Cantab. *Inquisitio pro Domino Rege capt' apud B. in Comitatu' pred' 10 die Julii, anno Regni Domini nostri Geor. Dei gratia, Angl', Scotiæ, Franciæ & Hibern. Regis, Fidei Defens. &c. per sacrament' A. B. C. D. E. F. &c. coram Johanne Cotton Mil' uno Justiciar' dicti Domini Regis ad Pacem in dicto Comit' conservand' necnon † ad diversas Felonias, Transgress. & alia malefacta in eod' Comitatu' perpetrata audiend' & terminand' assign'. Qui dicunt super sacrament' suum pred' quod A. B. de W. pred' Yeoman, diu legitime & pacifice seiscitus fuit in dominico suo ut de feodo de & in uno messuagio, &c. cum pertinentiis in W. pred' & possessionem ac seisinam suam pred' sic continuavit, quousq; C. D. de, &c. & alii malefactores ignoti primo die Septemb. ultimo elapso, * Yet these (* vi & armis, viz. cum baculis, gladiis, arcubus & sagittis, cultellis, falcastris, lapid' & aliis armis defensivis & invasivis) in messuag' pred' here seem to be needless, being necessarily implied in the Words Manu forti. Vide antea tit. Forcible Entry. † Pur le necessity de ceo part vide hic antea. &c.*

&c. intraverunt, ac ipsum A. B. sic disseisit & expulsum ab eodem messuagio, &c. a pred' primo die, &c. usq; ad diem captionis hujus Inquisitionis, cum hujusmodi fortitudine & potentia armata extra tenuerunt, & adhuc extra tenent, in magnam Pacis dicti Dom' Regis perturbationem, ac contra formam Statuti in Parliam' Dom' Henric. nuper Regis Angliæ sexti, anno regni sui octavo tento, in tali casu editi & provisi. * Ubi nullus eorum, nec aliquis alius, cujus stat' ipsi aut ^{* This last} aliquis eor' habuerunt, aut habuit, aliquid in eod' messuagio, &c. aut ^{Clause} in aliqua inde parcella habuerunt, aut habuit, infra tres annos proximi- ^{may be} me ante ingress. suum pred', neq; alio tempore precedente, ad notitiam Furator' pred'.

Alio modo super Statutum 8 H. 6.

Jurator' pro Domino Rege presentant, † Quod cum in Stat' in Par- ^{† And yet} liam' Dom' Hen. nuper Regis Angliæ sexti, apud Westmonast. anno ^{it seemeth} regni sui octavo tent' edit' inter cetera continetur, Quod si aliqua per- ^{not best to} sona, sive aliquæ persone, de aliquibus terris aut tenementis manu forti ^{recite the} expuls. seu disseisit' vel pacifice expellat' & postea manu forti extra te- ^{show the} neatur, vel aliquod Feoffament' vel Discontinuac' inde post talem In- ^{Forcible} gressum ad jus possessoris defraudandum & tollendum aliquo modo fiat, ^{Entry, &c.} habeat in hac parte pars gravata versus talem Disseisitor' Assisam, vel ^{and to con-} Actionem Transgress. & si pars gravata per Assisam vel per Actionem ^{clude, con-} Transgress. recuperet, vel per Verdictum vel aliquo alio modo per debit. ^{tra for-} Legis formam inveniatur, quod pars Defendens in terris & tenemen- ^{man Stat.} tis sic ingressus fuit, vel ea per vim post talem Ingressum suum tenuit, ^{in Parliam-} recuperet Quer' damna sua ad triplum versus talem defend' & ulterius ^{ment &c.} idem Defend' Finem & redemptionem dicto Dom' Regi faciet, prout ^{Vide post.} in Statut' pred' plenius continetur. Quidam tamen W. W. nuper de ^{tit. Indis-} W. in Com' pred' Husbandman, & G. D. de eadem Labourer, Statut. ^{ments.} pred' minime ponderant' nec panam in eodem Statut' content' aliquali- ter verentes, 20 die Februar. anno Regni Regis Georgii, &c. 21 apud C. in Com' pred' in unum Horreum, existent' liber' tenement' Roberti W. Decani Ecclesie Cathedralis W. manu forti ac vi & armis, viz. gladiis, &c. intraver' & Ingressum fecerunt, & pred' Decanum Ec- clesie pred' e libero tenemento suo manu forti, ac vi & armis pred' in- de sine judicio expulerunt & disseisiver' & L. P. Milit' firmar' Decani pred' Horrei pred' ad tunc & ibid' de pred' Horreo expulerunt & ejece- runt, & pref. Decanum sic inde expuls. & disseisit' a pred' 20 die Fe- bruar' anno supradict' usq; diem captionis hujus Inquisitionis, de pred' Horreo vi & armis pred' & manu forti extra tenuerunt & adhuc ex- tra tenent, in contempt' dicti Domini Regis nunc, & ad grave dampn' ipsius R. & contra Pacem dicti Domini Regis, & contra form' Sta- tuti pred', &c.

Another, wherein the Statute is not recited.

Inquiratur pro Domino Rege, si A. B. & C. D. nuper de, &c. as- ^{- This is the} sumptis eis aliis malefactoribus & Pacis Dom' Regis perturbatori- ^{best Form.} bus, modo guerrino arraiat' ad numer' 12 person' quorum nomina ad presens Furator' ignor' 10 die, &c. apud D. &c. (vi & armis, viz. &c.) in unum messuag' cum pertin' supra pacificam possession' M. L. intraver' & dictum M. a possessione sua pred' expul' & disseisiverunt, & eundem M. sic expulsum & disseisitum a pred' messuagio cum per-

tin' vi & armis pred' ac manu forti extra tenuerunt, & adhuc extra tenent, contra pacem dicti Dom' Regis, ac contra formam Statuti Domini Hen. nuper Regis Angliæ 6 anno Regni sui 8 inde edit' & provis.

Alio modo super Statutum 5 R. 2.

* For such
Recital of
the Stat.
see after in
the Title
Indict-
ments.

*Inquiratur pro Dom' Rege, &c. * Quod cum in Statuto in Parliam' Dom' Ricardi nuper Reg' Angl' secundi post Conquestum, apud Westm' anno regni sui quinto ten' edit' inter cetera ordinat' sic quod nullus faceret Ingressum in aliqua terras sive tenement' nisi in casu ubi Ingressus datur per Legem, & illo casu non manu forti, nec cum multitudine gentium, sed licito & quieto modo tantum; & si quis in contrarium fecerit, & inde debite convict' fuerit, per imprisonamentum corporis sui puniatur, & Finem ad voluntatem Domini Regis faciat, prout in eodem Statut. inter alia plenius continetur: Quidam tamen T. H. de I. in Comitatu predict' Yeoman, & alii, &c. Statutum predict' minime ponderant. 2. die Maii, anno Regni Dom' Geor. &c. vi & armis, viz. baculis gladiis, falcastris & bifurcis in unum Clausum I. C. Militis, jacent. apud D. in Com' predict' in quodam loco idem vocat. H. super possessione ejusdem I. C. Militis, ubi ingressus eis aut eorum alicui non datur per Legem, Ingressum fecerunt, & cent. perticas sepium vicar. ipsius I. Militis, adtunc & ibidem crescent. eradicaver' evulserunt & spoliaverunt, in dicti Domini Regis nunc contemptum, & ad grave dampnum ipsius I. C. Militis, & contra formam Statut. pred', &c.*

' The Lord Cromwel was indicted for a Forcible Entry upon Andrews, and in the later End they conclude thus, *Et si domus pred' non fuit in possessione Domine Regine*, they find it *billa vera*: This was adjudged a void Indictment, for it is *quasi a Conditione pred'*. *Telo. p. 15.*

' Fenton and others indicted, *quod unum messuag', &c. existens solum & liberum tenem. I. S. ingressum fecerunt*, and adjudged good. 1. *Ingressum fecer.* without saying *in messuag.* is good. 2. *Existens* without *adtunc* relates to the Time of the Entry. *Telo. p. 27.* Yet *Latch 109.* is contrary.

' Ford was indicted for a Forcible Entry and Detainer, and the Jury found as to the Forcible Entry *Ignoramus*, and as to the Forcible Detainer *Billa vera*, the Indictment being removed by *Certiorari*, and adjudged naught. *Hill. 4 Jac. B. R. Telo. pag. 99.*

' Shillet and seven others were indicted for a Forcible Entry upon the Possession of B. Farmer *de C.* and disseising C. but lay no Expulsion of B. and adjudged naught: But if it had not been alledged that B. was Farmer *de C.* but generally that they entred *super possessionem B.* and disseised C. it had been good enough. *M. 7 Jac. B. R. Telo. p. 195.*

' An Indictment was endeavoured to be quashed, because it is not said that he entred *manu forti*; but the Court said it was good, if it be said, *quod extratenuit manu forti.* 1. Exception, because a Forcible Entry cannot be *in medietat. manerii*; but the Court held it good. *Latch, p. 224.*

Note, that upon Indictments, &c. the Jury are only charged with the Effect of the Bill, *sc.* whether the Parties be guilty of the Forcible Entry, (or other Fact) or not; and not whether they be guilty in or under such Manner and Form as the Indictment or Bill specifyeth, or not, (*sc.* not whether it were with Staves and Swords, &c. which is but Matter of Form, and must be kept in every Indictment, though the Parties had neither Staff, Sword, nor other Weapon.) And so when the Jury say *Billa vera*, they say True, as they take the Effect of the Bill to be. And if there be false Latin in the Bill of Indictment, and the Jury find it *Billa vera*, yet their Verdict is True, *sc.* as to the Fact; and their Verdict doth not go to the Form of Words, but to the Effect of the Matter, and to the Fact, *sc.* they are to inquire whether there were any such Fact done by the Parties, or not. And so though the Bill vary from the Day, from the Year, and from the Place, and the Jury find *Billa vera*, yet they have given a true Verdict. *Doctor and Student* 162, 163.

And therefore the Justices of Peace before whom such Indictments of Forcible Entry or of Riots, &c. shall be taken, shall do well to inform the Jury, that they are bound to regard the Effect of the Bill of Indictment, or the Fact, and not the Form.

The Warrant to the Sheriff for making of Restitution, (if the Justice himself will not make it.)

J. C. *Mil unus Justiciar' &c. assign. Vic' ejusd' Comitatus salutem. Cum* *per quandam inquisitionem patrie coram me apud B. in Com' pred' 29 die Julii, &c. super sacrament' A. B. D. E. F. G. &c. ac per formam Stat' de Ingressibus manu forti factis in tali casu provisi. comp. fuit, quod E. F. &c. primo die Sept. &c. in quoddam messuag. &c. A. B. &c. in W. pred', vi & armis ingressi sunt, ac ipsum A. B. inde tunc manu forti disseisiver. & expuler. & pred' A. B. sic expulsus a pred' messuag' a pred' primo die Sept. &c. usque ad diem captionis Inquisition' pred' manu forti & cum potentia extra tenuerunt, prout per Inquisition' pred' plenius liquet de recordo. Ideo ex parte dicti Dom. Regis tibi mando & precipio, quod (ad hoc debite requisitus) una cum Posse Comitatus tui (si necesse fuerit) accedas ad messuag. & cetera premissa, ac eadem cum pertin. rescisiri facias, & pres. A. B. ad & in plenam possessionem suam inde, prout ipse ante Ingress. pred' fuerat seisit. restitui & mitti facias, juxta formam dicti Stat. Et hoc nullatenus omittas sub periculo incumbente. Teste me prefat' J. C. &c.*

This Warrant to the Sheriff to make Restitution shall be under the Teste of one of the Justices only, as it seemeth *Dyer* 182.

A Certificate of the Presentment or Verdict of the Jury in the King's Bench, whereof *vide antea* Tit. *Forcible Entry*.

A Certificate into the King's Bench of the Record of a Force viewed by the Justice, whereof *vide antea* Tit. *Forcible Entry*.

These two former Certificates (and the like) may be done and made by the Justices of Peace by Way of a * Letter (as it seemeth) inclosing therein the said Presentment of the Jury, or the said Record of the Justices, except the same be removed thither by a *Certiorari*, and then may the Justices return them in such Manner as appeareth hereafter, Tit. *Certiorari*, with some little Alteration.

8 Ed. 4. 18.
Br. Cor.
152.
Cor. 133.

See the
like
fine.

Or the Justice of Peace may himself deliver into the King's Bench such Presentment found before him, or such Record made by him, and the like, and that without any *Certiorari*, for that he is a Judge of Record. See *hic*.

The Return. The Form of a Certificate (or the Manner of the Return) of the Writ upon the Statute of Northampton into the Chancery.

Upon the Writ it self these Words may be indorsed, *Executio istius Brevis patet in quadam Scheda eidem Brevi consuta*. And the Schedule may be thus.

The Certificate.

EGO J. C. Miles, unus Custod' Pacis Domini Regis in Comitatu Cantab' certifico in Cancellariam dicti Dom. Regis, quod virtute istius Brevis mihi primo deliberati 10 die Aprilis anno, &c. publice proclamari (ex parte dicti Dom' Regis) feci apud B. cujus in dicto Brevi fit mentio, prout in dicto Brevi precipitur. Et quod quidam A. B. & D. E. de F. in Com. pred. Labourers, pred' Proclam. parci pendentis, post Proclam. pred. ibid. sic factam, armati iverunt, ac armat' potentiam ibid. duxerunt sc. duas galeas, unum arcum & decem sagittas, duos gladios, & totidem pugiones, in perturbationem Pacis dicti Dom' Regis, ac terrorem populi sui, necnon in contemptu Stat. in dicto Brevi specificati manifestum. Ac proinde dicti A. B. & D. E. una cum armaturis suis pred' arrestavi, & eor' corpora ad prox' prison' dicti Dom' Regis in Com' pred' duci feci, ibid' moratur' donec aliud a dicto Dom' Rege pro ipsor' deliberatione habuero in mandatis. Armaturas etiam eor' pred' appretiari feci per A. B. D. E. & F. G. de B. pred' Teomen, ad hoc juratos, qui dicunt super sacrament' suum pred' quod due galee valent decem solid' & quod dicti arcus & decem sagitte valent sex solid' & quod gladii pred' valent viginti solid' & quod dicti pugiones valent quinq; solid' & sic Armature pred' valent in toto quadraginta & un' solid' de quibus paratus sum respondere secund' tenorem dicti Brevis. In cujus rei testim' huic presenti Certificationi mee sigill' meum apposui. Dat' apud D. predict' die & anno supra dictis. J. C.

The Form of a Certificate to be made by him which shall take the Oaths of a Justice of Peace by Commission or Dedimus Potestatem.

Upon the Commission (or Dedimus Potestatem) indorse these or the like Words, *Executio istius Brevis patet in quadam Scheda huic Brevi annexat*. And the Certificate may be thus.

EGO M. D. in Cancellaria Dom' Regis certifico, me virtute Brevis Dom' Regis huic Schedule annex. 10 die mensis Decemb. anno regni dicti Dom' Regis Geor. Dei gratia, Regis Angliæ, &c. apud West Wratting in Com' Cant. recepisse sacrament' Johan' Millensent Mil' (in Brevi pred' nominat') tam de officio Custod' Pacis dicti Dom' Regis in dicto Com' Cant. bene & fideliter faciend' juxta form' Schedule Brevis pred' annex. quam sacram' specificat' in Actu Parl' anno regni Dom' Eliz. nuper Regine Angliæ primo facto, secund' tenor' Brevis & Sobedule Brevis pred' similiter annex. & in omnibus prout in pred' Brevi precipitur. In cujus rei testimonium, &c.

M. D.
CHAP.

C H A P. CLXXXIII. *Vide CXXX.**Riot.*

AN unlawful Assembly, and an unlawful Act makes a Riot; but if the Assembly was lawful, without an ill Intent, and an Affray happen, the Actors only are guilty: But if the Assembly was unlawful originally, then the Fact will be imputed to all who were present. 2 Salk. 594. 6 Mod. 43 141.

The Form of a Record of a Riot viewed by the Justices and Sheriff or Under-Sheriff.

Cantab.

Memorandum quod vicesimo die Jan. anno Regni Dom' nostri Georgii, Dei gratia, &c. nos J. C. Mil' & J. C. Mil' duo Just' dicti Dom' Regis ad Pacem in Com' pred', &c. assign' & W. W. Mil' adtunc Vic' ejusd' Com' ad gravem querim' & humilem petition' A. B. de D. in dicto Com' Teoman. in propriis personis nostris accessimus ad domum mansional' ipsius A. B. in D. pred' et adtunc et ibid' invenimus D. E. F. G. & H. I. de D. pred' Labourers, ac alios malefactores, et Pacis dicti Dom' Regis perturbatores ignotos, (ad numer' decem pers.) modo guerrino arraiatos, viz. gladiis, pugionibus, galeis, loricis, arcubus, et sagittis, illicite et riotose aggregatos, et eandem domum obsidentes, multa mala in ipsum A. B. comminantes, in magnam Pacis dicti Dom' Regis perturbation', ac populi sui terrorem, et contra form' Stat' in Parl. Dom' Hen' nuper Regis Angliæ quarti, anno regni sui decimo tertio tento, editi & provisi. Ac propterea nos prefat. J. C. J. C. & W. W. pred' D. E. F. G. H. I. &c. tunc & ibid' arrestari, ac proxi' Gaole dicti Dom' Regis in Com' pred' duci fecimus, per visum et record' nostr' de illicita Congregatione et Rioto pred' convictos, ibid' moratur' quousq; Finem dicto Dom' Regi proinde fecerint. In cujus rei testimonium huic presenti Recordo nostro sigilla nostra apposuimus. Dat' apud D. pred' die et anno primo supradictis.

13 H. 4

Lam. 312. And if a Man be slain or maimed, or a Rescous be done to the Officer by the Rioters, then the Record ought to be *riotose occiderunt*, or *riotose mahimaverunt*, or *riotose recusserunt*, but not *felonice*; nor simply *recusserunt*, because their Authority is in this Case restrained to the Riot only; so as notwithstanding that Record the Parties may plead Not guilty to the Felony or the Rescous, howsoever for the Riot they are estopped.

The *Mittimus* for conveying the Rioters to the Gaol may (with some few Words of Change) be made out of that which is here before for such as hold by Force. See hereof *paulo antea* amongst the Precedents in *Forcible Entry*.

The Precept (to the Sheriff) to return a Jury for an Enquiry upon a Riot.

Cantab. **J.** C. Mil. & J. C. Mil. duo Justiciar', &c. assign. Vic. ejusd. Com. salut'. Ex parte dicti Dom. Regis tibi precipimus, quod venire facias coram nobis apud I. in Com. pred. 2 die Jan. prox. futur. 24 probos, fustice et legales homines, de Com. pred. quorum quilibet habeat terras et teneamenta infra dict. Com. liberi tenementi per chartam ad annum valorem viginti solid. aut per Copiam Rot. Cur. ad annum valorem viginti seu solid. et octo denar', aut per utramque ultra omnes reprimas, ad inquirend. pro dicto Dom. Rege, ac pro indemnitate nostra in hac parte super sacrament. suum, de quibusd. illicitis aggregationibus & Riots apud D. in Com. pred. nuper commissis, ut dicitur. Et hoc nullatenus omittas sub pena viginti librar. quam incursumus es, si in executione premiss. defeceris. Et habeas ibi tunc nomina Jurat. pred. et hoc precept'. Dat. sub sigillis nostris 20 die Jan. anno Regni dicti Dom. nostri Georgii, &c.

The Form of the Enquiry, Indictment or Presentment of the Jury.

Cantab. **I**nquisitio pro Domino Rege, &c. (as before in Forcible Entry) coram J. C. Mil. & J. C. Mil. duob. Just', &c. qui ad hoc jurati & onerati dicunt super sacrament. suum pred. quod D. E. F. G. & H. I. de S. in Com. pred. Labourers, simul cum aliis malefactoribus & Pacis dicti Dom. Regis perturbatoribus ignotis, (ad numerum septem person.) modo guerrino arraiati, vi et armis, viz. gladiis, arcibus, et sagittis, 10 die mensis Jan. ult. preterito, apud D. in Com. pred. inter horas octavam et nonam post meridiem ejusd. diei, domum mansionalem A. B. de D. pred. Yeoman, situat. in D. pred. riotose freger. et intrao', et in ipsum A. B. tunc et ibid. insultum fecerunt, ac ipsum tunc et ib. verberaverunt, vulnaverunt, et indignis modis tractav. ita quod de vita ejus desperabatur, in magnam Pacis dicti Dom. Regis perturbationem, et populi terror', ac contra form. Stat. de Riots, Riots, & Congregat. gentium illicitis, in Parl. Dom. Hen. nuper Reg. Angl. quarti, anno Regni sui decimo tertio tento, provisi et editi.

Directions. Note that all Indictments of Riots or Forcible Entries, &c. taken before Justices of the Peace must be after this Form, sc. Inquisitio, &c. capta, &c. coram J. C. & R. T. &c. (if out of the Sessions; or if at the Sessions, then coram J. C. et sociis suis) Justic. Dom. Reg. ad Pacem in dicto Com. Conservand', necnon ad divers. Pelon', &c. qui, &c. ut hic in Forcible Entry. Vide etiam hic antea.

Alias.

Another Form of the Enquiry. **I**nquisitio, &c. Qui dicunt, &c. quod A. B. C. D. & E. F. de, &c. aggreg. eis quampluribus aliis malefactor. & Pacis Dom. Reg. perturbator. ignotis, ad numer' sex person', modo guerrino arraiati, per instigation. & procurat. J. S. 3 die Sept. anno, &c. vi & armis, viz. gladiis, baculis, & aliis arm. tam invasivis quam defensivis, apud Ab. Mag. in Com. Cant', injuste, riotose & routose assemblaverunt, Clausumq; W. H. Milit. apud A. pred. ad tunc & ibid. injuste freger. & in-

& intraver', & 10 partic. Sepium vivar. ipsius W.H. Militis adtunc ^{Quick-} ^{Hedges de-} ^{project.}
 ibid. crescent. eradicaver', eoulserunt, & spoliaverunt, ad grave dampn.
 ipsius W.H. ac contra Pacem dict. Dom. & contra form. diversor.
 Stat. in hujusmodi casa editor. & provisor.

Alias.

Clausum Willielmi H. (apud F. or vocat', &c.) infr. Paroch' de ^{Hedges cut} ^{or pulled} ^{up.}
 Ab. Magna in Com. pred. riotose fregerunt & intrav. ac Sepes et
 Claus. pred. W. H. numer' sexcent. pred. adtunc & ib. existent. lacera-
 verunt, irruer. & prostraver', ad grave dampn', &c. et contra Pa-
 cem, &c.

Alias.

AC Foss. ibid. existent. adtunc & ibid. cum ligonibus bipaliis fode- ^{Ditch dug} ^{down.}
 runt, planaverunt, & implerunt, ad grave dampn', &c.

Alias.

Clausum, &c. injuste freget. & intraver', & sex acras Tritici ad- ^{Cutting} ^{and carry-} ^{ing Corn.}
 tunc & ib. crescent. valoris, &c. de bonis & catallis W. H. pred.
 adtunc & ibid. invent', injuste, riotose & routose messuerunt, falcave-
 runt, & asportaverunt, ad grave dampn', &c.

Alias.

Quoddam Clausum vocat', &c. cujusd' R. T. Armig' freget & in- ^{Trespass,} ^{&c.}
 traver', ac herbas ipsius R. T. adtunc & ib' crescent' cum qui-
 busd' averiis non sol' depast' fuer' conculcaver' & consumpser' sed etiam
 pred' claus' cum equis & aratro araver' & saboeri ad grave dampn', &c.

Alias.

Domum cujusd' J. S. apud, &c. freget & intraver' ac bona & ca- ^{House bro-} ^{ken, and} ^{Goods ta-} ^{ken away.}
 talla pred' J. S. ad valentiam 10 l. in domo sua pred. adtunc in-
 vent' riotose ceper', spoliaver' & asportaver' ac cistas ipsius J. S. in do-
 mo sua pred. tunc existent. riotose freget & sex cochlear' argent' ad va-
 lentiam 40 s. de bonis & catallis ipsius J. adtunc & ibid' invent' rioto-
 se ceper' & asportaver' ac hordeum ipsius J. S. tunc & ibid' in horreo
 suo invent' riotose ceper' & asportaver' ad grave dampnum, &c.

As for the Certificate (which ought to be made to the King and the ^{Certificatio}
 Council, in Case that by this Enquiry the Truth of the Fault and
 Riot be not found) such Certificate may be done in *English* by Way
 of a Letter, comprehending the Truth of the whole Matter, with the
 Certainty of the Time, Place, and other Circumstances of the
 Fact or Riot, together with the Certainty of the Names of the Rio-
 ters; as also of the Names of such who by Maintenance, Embracery,
 or otherwise, were any Impediment to the Finding thereof, with their
 several Misdemeanours: Which Certificate or Letter is to be directed
 and sent by the said Justices of Peace and Sheriff or Under-Sheriff, into
 the King's Bench, &c. within one Month. See *antea*, Tit. Riot.

A Tra-

A Traverse to an Indictment of a Riot, and the Record thereupon.

Cantab. **The Style of the Session.** **The Indictment.** **Proceſſi.** **Ad reſponſiond.** **Traverse.** **Fury.** **Not guilty.** **Day given.** **The Verdict.** **The Judgment.** **Cap. pro Fine.** **Ponunt ſe in miſericordiam Regis.** **Fine aſſeſſat.**

A Lias, ſc. ad Session' Pacis tentam apud Caſtr' Cantab. in Com' pred' die Martis proxim' ante Feſtum S. Matthæi Apoſtoli, anno Regni Dom' noſtri Georg. Dei gratia, Angliæ, Scotiæ, Franciæ & Hi-berniz Regis, Fidei Deſenſor', &c. 10 cor' A. B. C. D. & aliis ſociis Juſticiar' dict' Dom' Regis ad Pacem in Comitatu' pred' conſervand' necnon ad divers' Felon' Transgr' & alia malefacta in eod' Com' perpetrata audiend' & terminand' assign' per ſacrament' duodecim' Jurator' extitit preſentat', quod J. L. de, &c. R. M. de, &c. & T. L. de, &c. cum diversis aliis ignotis malefact' & Pacis dicti Domini Regis per-turbator' modo guerrino arraiat', uniti & aſſemblari, vicesimo die Julii, in noct' ejusd' diei, ann', &c. vi & armis, viz. baculis, gladiis, clypeis, pugionibus, falcaſtris, & aliis armis, tam inoſiſſimis quam deſenſiſſimis, apud C. &c. riotose & routhose fregerunt & intraverunt, & octo plauſtra ſani ad valent', &c. adtunc & ibid' exiſtenti' de bonis & catallis dicti D. adtunc & ibid' injuſte & illicite ceperunt & aſportaver' contra Pacem dicti Dom' Reg', &c. & contra form' Stat' inde editi & proviſi; per quod precept' fuit Vic' Com' quod non omitteret, &c. Poſteaſque, ſc. pred' die Martis prox' ante Feſtum S. Matthæi Apoſtoli, anno 10 ſu-pradiſto cor' pref. Juſtic' venerunt pred' I. L. R. M. & T. L. in pro-priis perſonis ſuis, & habit' audit' Indict' pred' ſeparat' dicunt, quod ipſi non ſunt inde culp' & ad hoc ponunt ſe ſup' Patriam, & A. M. qui pro Dom' Reg' in hac parte ſeq. ſimilit', &c. Ideo veniat inde Jurata cor' Juſt' dict' Dom' Reg' ad Pacem in Com' pred' conſervand' assign', &c. ad Session' Pacis apud G. &c. die Martis prox' poſt Epiphaniam Dom' tunc prox' futuro tenend' & qui, &c. ad recogn', &c. quia tam, &c. Idem datus eſt tam pref. A. M. qui ſequitur, &c. quam pref. I. L. R. M. & T. L. &c. Ad quas quidem Sessiones tent' apud G. pred' in Com' pred' die, &c. cor' dict' T. P. G. N. & H. P. Milit' & ſociis Juſt' dict' Dom' Reg' ad Pacem in Com' pred' conſerv' necnon ad divers' Fe-lon' Transgr' & alia malefacta in eod' Com' perpetrata audiend' & ter-minand' assignat' venerunt tam pref. A. M. qui ſeq. &c. quam pref. I. L. R. M. & T. L. in propriis perſonis ſuis & Jurat' pred' per Vice-com' Com' pred' ad hoc impanellati & exacti, viz. I. F. I. G. &c. ſimi-liter venerunt; qui ad veritatem de premiſſ. dicendam triati & jurati, dicunt ſuper ſacrament' ſuum, quod pred' I. L. R. M. & T. L. culpa-biles ſunt, & eor' quilibet culpabilis eſt, de Transgreſſ. Contemptu & Rioto pred' Indictamento predict' ſuperius ſpecificatis, modo & forma prout ſuperius verſ. eos ſupponitur. Ideo conſid' eſt per Curiam, quod pred' I. L. R. M. & T. L. capiantur ad ſatiſficiend' dict' Dom' Reg' de Finibus ſuis occasione Transgreſſ. Contemptus & Rioto pred'. Qui quidem I. L. R. M. & T. L. adtunc & ibid' preſent' in Cur' petierunt ſe ad Finem cum dict' Dom' Rege occasione pred' admitti: Et inde po-nunt ſe ſeparat' in miſericord' Dom' Regis. Et aſſeſſatur Finis ejusd' I. L. pro Juſt' pred' ad tres lib' ſex ſolid' octo denar' & Finis ejusd' R. M. aſſeſſatur ad viginti ſolid' & aſſeſſatur Finis ejusd' T. L. ad quinq; libr' bonæ & legalis monete Angliæ, ad opus & uſum dicti Dom' Reg'.

I have inſerted this former Precedent, for that it diſcovereth much Matter worthy the Juſtices Obſervation.

C H A P. CLXXXIV. *Vide CXXXI.**Indictments.*

FOR the Form of Indictments in Cases of Forcible Entry and Riots, I have here before set down certain Precedents; nevertheless for that these Indictments are the chief Foundation whereupon the whole Trial is after to be grounded, I thought it not amiss to observe here these few general Rules, as well concerning the Matter as the Form of these and all other Indictments or Presentments to be taken before the Justices of Peace.

First, In these Indictments of Forcibly Entry and Riots (as also in all other Indictments of Felony or Trespass) it is good to say, *Against the Peace*, or other Words to that Effect.

Lamb.
484.
18 H. 8.
c. 8.

These Words, *With Force and Arms*, (viz.) *with Swords, &c.* are not of Necessity, yet it is good to use them, especially if the Circumstances of the Fact do require them; for these Circumstances do either aggravate or diminish the Offence. *Stamf. 94.*

But these Words [*with Force and Arms*] are needless in an Indictment of *Forcible Entry*, because they are implied in the Word *Force*.

Yet note, that in all the Indictments of *Treason, Murder, Felony* or *Trespases*, these Words [*with Force and Arms*] are necessary to be put in: (Otherwise it seemeth of Offences which are against the Peace only, as *Conspiracies, Deceits, Slanders, Escapes for Debt, and the like.*) *Finch.*

Co. 4. 48. Also in Indictments found upon Statutes it is not needful, nay it is not safe to recite the Statute at all: For as the Recital is not necessary, so the Mis-recital thereof in the Matter, or in the Year, Day or Place, is fatal to the Indictment, and maketh it void. But it is safe and sure to draw the Indictment with this Conclusion.

Br. Parl.
87.

Co. 4. 84.
Dyer 363.

Against the Form of the Statute in such Case made and provided, (if the Indictment be founded upon the Statute:) Or *against the Form of several Statutes in such Case made and provided,* (without naming any special Statute, where many Statutes do concern one Offence). *Crompt. 104.*

Plo. 1. &
79.

Yet the Offence against the Statute must be certainly described in the Indictment, and the Substance and material Words in such Statute must be fully set down therein. *Plo. 1. & 79. Lamb. 485. Co. L. 98. b.*

Lamb.
463, &c.
Br. Indict-
ments 6.
24, 34, 46,
& 47.
Stamf. 96.

Also all Indictments and Presentments (being in the Nature of Declarations for the King against the Offenders) ought to contain Certainty, and shall not be supplied or maintained by Implication, Intendment or Argument. *Co. 5. 120. Plo. 84. 122.* and therefore six principal Things are requisite in all Presentments before the Justices of Peace, viz.

1. The Names and Surnames, as well of the Parties indicted, as of the Parties offended; with the Addition of the Degree, Mystery, and the Dwelling-place of the Party indicted, (*sc.* both the Town and County).

Yet in some Cases an Indictment, that he did procure unknown Persons, or that he did take the Goods of an unknown Person, &c. or the like, may be good. See *plus Lamb. 470, 476. Br. Indictment 6, 10, 11. Dyer 99. & Plo. fol. 85. b.*

The.

2. The Time, *sc.* the Day and Year when the Offence was done.

3. The Place, *sc.* the Town and County where it was done, as at Br. Indictment 24, B. in the County of C.

4. The Name or Quality of the Thing in which the Offence is committed: *viz.* of dead Things it may be the Goods and Chattels, expressing them certainly; of live Things, Horse, Ox, Sheep, &c. but not Goods and Chattels. So of Entry, &c. to express certainly whether it be House, Land, Meadow, Pasture, Wood, &c. 41, 42. Lamb. 478.

5. Also the Value or Price of the Thing is commonly to be set down to aggravate the Fault.

6. The Manner of the Fact, *sc.* the Manner and Nature of the Offence; as whether it be Felony, or Trespass, or Penal Statute, &c. Lamb. 480.

See Lamb. 480. Br. Indict. 7. 36.

And yet for the Form of Indictments the Jury are not strictly tied thereunto, (*sc.* to the Day, Year or Place, &c.) but chiefly to the Manner of Fact. *Vide hic antea.*

Verby. Also Indictments ought to be framed so near the Truth as may be, and the rather, for that they are to be found by the Jury upon their Oaths. Co. 9. 119. Pla. 84.

Yea, an Indictment being *vereditum, id est, dictum veritatis*, and a Matter of Record, ought to set forth all the Truth that by Law is requisite; for *de non apparentibus & non existentibus eadem est ratio*: And every Part of the Indictment material ought to be found by the Oath of the Jurors, and it is not to be supplied by Averment; otherwise the Indictment will be insufficient.

But false *Latin* shall not make void an Indictment. Co. 5. 121.

And to this Purpose note, that false *Latin* may be said to be of three Sorts.

Words of Art. First, Words of Art, being Words significant allowed by our Law, and known to the Sages of the Law, though not allowed by the Grammarians, not having the Countenance of *Latin*; as *Messuagium, Toftum, Gardin, Brüera, Mundred, Burglariter, Felonice*, &c. these and the like are Words of Art, and are allowed in the Law; yea, the Civilians and Physicians do use the like, and every Science have their *vocabula artis*.

The second Sort is false Writing or incongruous *Latin*, as *wiginti* for *viginti*, *septinginti* for *septinginti*, *prefato* for *prafato*, &c. These two former Sorts shall not avoid or make void any Indictment, Grant or Deed.

The third Sort are Words insensible, especially if the Words of Art are written insensibly or falsely; as *Murdredum* for *Murdrum*, *Burgariter* for *Burglariter*, *Feloniter* for *Felonice*. These Words *Murdredum, Burgariter*, and *Feloniter*, (being no *Latin* Words, nor allowed by Law as Words of Art) if they shall be in any Place or Point material, they do make void the Indictment: Except where such Words insensible be Surplusage. See Co. 4. 39. 42. & 10. 133.

And yet *quare*, for these Words have the Countenance of those other Words of Art, and do shew the Court sufficiently what is thereby meant, and seem to be only the false Writing of the Clerks, and therefore might be amended in Case of Indictment. See Coke 10. 133.

C H A P. CLXXXV.

Sessions.

THE Sessions of the Peace are a Court of Record holden before two or more Justices of the Peace, whereof one is of the ^{§. 1.} *Quorum*, for Execution of the Authority given them by Commission of the Peace, and certain Statutes and Acts of Parliament.

2. The Sessions of the Peace were anciently uncertain and undetermined as to the Times, for so that few Persons being in Commission, as 4 or 6, and those for the most Part Men of Law, they thought it burthensome to attend; and therefore 36 E. 3. 12. a Law was made, that in the Commission of the Peace express Mention should be made, that the said Justices make their Sessions four Times in the Year, viz. one Sessions within one Week after the *Epiphany*; the second within the second Week of Lent, the Third between the Feasts of *Pentecost* and *St. John Baptist*; the Fourth within eight Days of *St. Michael*. But that Course proving inconvenient, by the Statute of 12 R. 2. c. 10. it is ordained.

3. The Justices shall hold their Sessions in every Quarter of the Year at least, and that by 3 Days at the least, upon Pain to be punished by the Discretion of the King's Counsel. And because those Times were uncertain, it is ordained.

4. By the Statute of 2 H. 5. 4. the Justices of Peace shall make their Sessions four Times in the Year, viz. in the first Week after the Feast of *St. Michael*, the first week after the *Epiphany*, the first Week after the Close of *Easter*, and the first Week after the Translation of *St. Thomas the Martyr*, and more often if need be. And because the Penalty and Danger of every Justice in Commission for not appearing there was by the said Statute of 12 R. 2. c. 10. to be punished at the Discretion of the King's Council, the Justices of the one Bench and the other, and Serjeants, were exempted herefrom by the said Statute, as also by the said Statute of 2 H. 5. 4.

5. But in as much as the King's Court sitting in the Term-Time, did frequently call before them the Inhabitants of the County of *Middlesex*, and thereby most of the Business in that County was dispatched, and the Justices of Peace were compelled to hold their Sessions four Times in the Year, to avoid Penalties of former Statutes. By the Statute of 14 H. 6. c. 4. it is provided that the Justices of Peace in *Middlesex* be discharged of these Penalties, provided they hold their Sessions twice a Year, and oftner if need be, for Forcible Entries or Riots. But the Justices of Peace may yet hold their Sessions four Times in the Year if they see Cause, as formerly they might have done: And if they do hold them but twice a Year, yet those Times must be some of the Times mentioned in the Statute of 2 H. 5. 4. for they are such Times as were judged most convenient for the Ease of the Subject.

See more touching the Times of these Sessions before, c. 4 *sect.* 4.

As to the Place, there is no Determination thereof by any Statute Law: But certain it is, they must be holden in some Place within the

the County for which they are holden, for that the Justices of Peace their Authority is so circumscribed. And therefore if the King shall make a Place within a County of it self, and give them all Privileges of Jurisdiction, it will not be safe for the Justices of the ancient County to hold their Sessions there, unless the King by his Letters Patents reserve such Power. But if a Place within the County be incorporated by the King, and Justice be there appointed; yet the same remains still Parcel of the County, and the Justices of the Peace of the County may hold their Sessions there, but may not intermeddle with Matters arising there, saving such as happen in their Sessions, or with Relation thereunto; for the making such Corporation, and giving them such Power, carries with it an Exclusion of other Commissioners to be appointed by the King, as to Matters arising in such Corporation, so long as such Corporation execute their Authority duly and justly. But in Case of any great Miscarriage in, or Default of, the Execution of Justice there by such Incorporation, as their Liberties may be seized, and restored to the Crown by a *Quo Warranto*; so notwithstanding such Grant there is Construction of Law left in the King, a Power to provide for the Execution of Law and Justice there, and he may grant a concurrent Commission to worthy and able Persons, who shall see Justice there done. And such Power, as it is honourable for the King, so it is safe for the Subject.

And although the Place be not otherwise determined than as aforesaid by any Statute Law, yet may the Common Law have some Influence on such Authorities and delegated Powers, to confine them to what is reasonable and safe: And therefore could it be supposed that Justices of Peace would appoint their Sessions at a Place known publickly, and to them too, to be infected with the Plague, or on the Confines of a County, or near some publick Dangers by Enemies or otherwise; and their so doing be accompanied with other Circumstances of Wilfulness or worse; such Justices would for the same be punishable by Information and Fine in the King's Bench.

§. 4.
Two Places.

Mr. *Lambert* puts a Case from Mr. *Marrow*, that if two or more Justices appoint the Sessions to be holden in one Town, and so many more appoint a Sessions in another Town the same Day, and holds they may be so held, and that the Presentments in both are good; but that Appearance at one is a Discharge of Service at the other. But with his Favour it may be well questioned whether they are not both void; for they make two Courts of that which ought to be entire and but one: For I do not find the Justices are required or enabled to hold more than one Sessions at a Time; and so their Authority being equal, and seeing no Preference can be made by the Priority of Time, or Nature of the Service, they may be taken to be both void. However certainly the Justices, by whose Frowardness such Division happens, or on whom such Miscarriage is chargeable, on Consideration of their Circumstances of the Matter, are punishable for the same by Information and Fine, or putting out of Commission, as the Cause shall require.

§. 5.

So also (which is another Case put by Mr. *Lambert*) if the Justices appoint a Sessions in one Town, and hold it then in another, without timely Notice of their Alteration of such Appointment, it is

is punishable in them, for it tends to the Hindrance of the Service, and Trouble and charge for the Subject.

These Sessions may be, and are usually warned by a Warrant under the Hands and Seals of two or more Justices of the Peace, *Quorum unus*, which may be thus.

G. H. Mil. & R. C. Arm' duo Just' Dom' Regis ad Pacem in §. 6.
Com' S. conservand' necnon ad divers. Felon' Transgr' & alia male-^{Precept.}
facta in dicto Com' perpetrata audiend' & terminand' assignati. Vic'
ejusdem Com' salut'. Ex parte dicti Dom' Regis tibi precipimus,
quod non omittas propter aliquam libertat' in Balliva tua, quin eam
ingrediaris, & ven' fac' cor' nobis, vel sociis nostris Just' Pacis, &c.
(tali die, &c.) prox' futuro, apud E. in Com' pred' tam 24 probos
& legalis homines de quolibet Hund' in Balliva tua, quam 24 Milites
& al' probos & legales homines de Corpore Com' tui (tam infra Li-
bertates quam extra) quor' quilibet habeat 40s. terrar' & tenem' li-
ber' per an' ad minus, ad inquirend' tunc & ibid' super hiis que ex parte
dicti Dom' Regis eis injungentur. Scire facias etiam omnibus Co-
ron' Com' tui, Seneschal' Constab' Subconstab' Ballivis Libertat' infra
Hundreda & Libertates pred' quod sint tunc ibi ad faciend' & perim-
plend' ea que ratione Officiar' suor' facienda fuerint. Proclamari
preterea facias per totam Ballivam tuam (in locis idoneis) predict'
Session' Pacis ad diem & locum pred' fore tenend'. Et tu ipse tunc
sis ibid' ad faciend' & exercend' ea que ad Officium tuum pertinent.
Et habeas ibi tunc tam nomina Jurat' Coron' Seneschal' Constab' Sub-
constab' & Ballivor' pred' quam hoc Precept'. Dat' sub sigillis nostris
apud D. in Com' predict' 16 die Mar. anno Regni dicti Dom' nostri
Regis Caroli Secundi, &c.

The Persons that ought to appear at these Sessions are as follow. §. 7.
First, 'The Justices of Peace. For as a Sessions cannot be held ^{Who ought}
without a competent Number; so the Business of the Sessions can-^{to be pre-}
not be well done without their Appearance, not only in the return-^{sent.}
ing thither such Recognizances and Examinations as they have ta-
ken, and seeing the Parties prosecuted and convicted, or acquitted of
the Crimes charged on them; but also for deciding and determin-
ing such Difficulties as shall arise, and also to give Information
touching Persons and Things that fall within their Knowledge re-
spectively; for *In the Multitude of Counsellors there is safety*.

2. 'The Custos Rotulorum, who by Virtue of his Place hath the ^{Clerk of}
Custody of the Rolls of Sessions, ought to be there by himself or ^{the Peace.}
his Deputy, who is the Clerk of the Peace.

3. 'The Sheriff by himself or his Deputy, to receive the Fines, ^{The Sher-}
to return Furors, to execute Process, and what else to his Office ^{riff.}
doth appertain: For by Virtue of the Commission he is command-
ed to be attendant on the Justices of Peace at all Times, especi-
ally in Sessions.

4. 'The Constables of Hundreds ought there to be, and all other ^{Constables}
Officers to whom any Warrant hath been directed in Order to make ^{of Hon-}
Return thereof. ^{dreds.}

5. 'The Gaoler, to bring thither such as have been sent by Mitti-^{The Gaol-}
mus to him, there to remain until Sessions; and such as are sent thi-^{er.}
ther for Larcenies and such Offences of like Nature, of which the
Sessions do usually deliver the Gaol; and to give a Calendar of
such

such as are in Prison, and to receive such as may be there committed for any Contempt or Offence.

The Keeper of the House of Correction.

6. The Governour of the House of Correction, to give in a Calendar of such Rogues and disorderly Persons as have been committed to his Custody, and an Account of them; or in Default thereof he is finable by 7 Jac. 4.

The Jury.

7. All Jurors returned by the Sheriff by Virtue of the said Precept.

8. All Persons bound by Recognisance to answer, or to prosecute and give Evidence.

Bailiffs of Hundreds.

9. All Bailiffs of Hundreds and Liberties, in Respect they are bound to give an Account of all Sessions Process.

Coroners.

10. All Coroners, &c.

That the Justices of Peace are compellable to appear at the Sessions is out of Doubt; for without their Appearance the Sessions cannot be holden. And in this Case no one is more bound than another to attend, unless some great Men, and Men of the Law, who are exempted by 12 R. 2. 10. & 2 H. 5. 4. and those Statutes requiring the Sessions to be held. For Default thereof all Persons in Commission (unless exempted by the Statute) are equally punishable; and if two three, or more, shall hold the Sessions, why the Rest should not appear to perform the Duty, and to bear the Burthen, or neglecting should not be punished, there can be no Reason given. And therefore I conceive, 1. That such as do not appear are within the Danger of 12 R. 2. 10. whereby for Defaults by them in not holding the Sessions, or not so long as is thereby appointed, they are to be punished by the King's Council in their Discretion; which whether it be the King's Privy Council, or the King's Learned Council, *i. e.* the Judges of the Laws, or who else it be, 'tis not for me to determine; for that every one that is absent is guilty of not holding the Sessions. Or, 2. Such Justice of Peace may be indicted or informed against in the King's Bench for such Default, it being a Neglect of his Office, and fined for the same; especially if those Omissions are frequent and usual. Or, 3. There is great Reason to put him out of the Commission of the Peace for such Neglect. Or, 4. I see no Reason but the Justices of Peace in Sessions may proceed by Information or Indictment against such Defaulter, and proceed to Fine or Imprisonment: And the Reason given by Mr. Lambert (*lib. 4. p. 3. fol. 383.*) I think will not hold here; for what they do in Sessions they do as a Court, and not as particular Persons; as was lately holden in the Case of Sir Nicholas Stoughton in the King's Bench, who being a Justice of Peace in Surrey, was required by the Court of Sessions there to find Sureties for the Good Behaviour, upon the Complaint of one Gilham, for threatening a Juror for presenting a Matter there, and for not giving Security was committed: And this was resolved to be well done for the Reason aforesaid; which Reason to my Observation will also hold in Case of any Neglect or Mis-carriage against the Court of Sessions, even by a Justice of Peace; or otherwise against any Law whereof they as a Court have Cognisance.

The Jurors not appearing according to their Summons are punishable by Loss of Issues, which usually make Part of the Estreats of Sessions. As also the Constables by Fine to be set on them.

The Justices being met to hold the Sessions, the usual Course is with three *Oyes* to proclaim the Sessions, and then read the Commission of the Peace; which done, to call the Constables, and out of them to make one or more Juries for Grand Juries, or Juries of Pre-sentment; who being sworn, the Charge is given them to call the Recognisances, especially such as are to prosecute and give Evidence, that so Bills may be drawn and prepared. To which Purpose an able Clerk is requisite, that so Labour, Time, and Charge may not be spent in vain; which Bills being ready, the Parties bound over for that Purpose are sworn to give Evidence upon the Bills: And the Course is to bid the Evidence go with the Jury, where they consider of the Matter of the Bill, and either find it or not find it, as the Evidence appears to them credible and sufficient, or otherwise, and then they return it; but it may be very reasonable, if the Matter be weighty or difficult, and the Jury be not very able, or the Prosecution be too slack or over violent, to hear the Evidence given in Court, that so the Jury may be the better assisted in doing their Duty.

Whilst the Juries are gone out of Court, the usual way is to hear Motions touching Settlements of poor Persons, and other Things relating thereunto; and to call Persons bound over to the Peace or the Good Behaviour: But it may not be best to discharge them until the End of the Sessions, for fear Persons may come to prefer Bills against them, or to complain of them when the Birds are flown.

And because the Arraignment and Trial of Prisoners is a great Part of the Business of Sessions, I will take Notice of some Parts thereof, and Proceedings thereupon.

Towards the End of the Sessions, when it appears what Bills are come in against the Prisoners, the Gaoler being called to set his Prisoners to the Bar, and the Crier being called to make a Bar, that is, to dispose of the Company that a Way be made open from the Court to the Prisoners, that the Court, Jury and Prisoners may see each other; one of the Prisoners is called to: *A. B.* hold up thy Hand; (this is done to notify him to the Court, the Jury and Standers by.) Thou *A. B.* standest indicted by the Name of *A. B.* of, &c. (Name him as he is named in the Indictment, &c.) for that thou, or that thou with others, &c. (and so recite the whole Indictment in English; which done) How sayst thou *A. B.* art thou guilty of this Felony and Burglary, or Felony and Robbery, or Felony and Murder, (as the Case is) whereof thou standest indicted, or not guilty? If the Prisoner say Guilty, then the Confession is recorded, and no more done as to him till Judgment; but if he say Not guilty, then the Clerk says, *Culp. prift.* (*i. e.* Guilty already.) How wilt thou be tried? It is usual to say, By God and the Country; but if the Prisoner stand mute, and will not plead, 'tis best to ask him three or more Times, and to tell him the Danger of standing Mute, and the Grievousness of the Judgment, *de peine fort & dure*: And if yet he will stand Mute, nothing more can be done concerning him, but to record it. But if he plead Not guilty, so record it; and in like Manner all the Rest of the Prisoners. And if two, three or more, they being called to severally, thus; you *A. B.* hold up thy Hand; you *C. D.* &c. and so of the Rest. Then say, you

You *A. B.* by the Name of *A. B.* of, &c. and you *C. D.* by the
 Name of *C. D.* of, &c. and so the rest; for that you, &c. and so
 recite the Substance of the Indictment. Then call to them several-
 ly to plead, &c. (The Word Arraign cometh from the *French*
 Word *Arranger*, *ordine collocare*, *quia rei ordine vocantur ad Ro-*
sira seu Cancellor, *qua nos Barram vocamus*, saith *Skinner*.) Which
 done, the Prosecutors are called on the Recognisances to give Evi-
 dence; then the Jury are called on their Panel, (for a Return can-
 not be made upon a *Venire facias* made the same Sessions, and a
 Trial had thereupon in the same Sessions, as is held 22 *E. 4. Fitz.*
Coron. p. 44. and *Stamf. l. 3. c. 5. f. 156.* in case of Justices of
 Peace in their Sessions; much less can they nominate or direct the
 immediate Return of By-standers. But otherwise it is in Case of
 the Justices of Gaol-delivery: Therefore consider whether a Trial
 can be had of a Felon the same Sessions he pleads, unless he con-
 sent thereunto) thus, You good Men that are returned and impa-
 nelled, to try the Issue joined between our Sovereign Lord the King
 and the Prisoners at the Bar, answer to your Names. Which done,
 and they appearing a full Jury, make Proclamation thus: If any
 Man can inform the King's Attorney, or this Court, of any Trea-
 sons, Murders, Felonies, or other Misdemeanours against *A. B. &c.*
 the Prisoners at the Bar, let them come forth, for the Prisoners stand
 upon their Deliverance. Then say to the Prisoners, You Prisoners
 at the Bar, the Persons that you shall now hear called, are to pass
 upon your several Lives and Deaths; (or if it be Petit Larceny, are
 to pass on your Trial;) if you will challenge them, or any of them,
 you must challenge them as they come to the Book to be sworn,
 and before they be sworn. Then call the Foreman of the Jury, and
 say to him, Lay your Hand on the Book, and look upon the Priso-
 ner; You shall well and truly try, and true Deliverance make, be-
 tween our Sovereign Lord the King and the Prisoner or Prisoners at
 the Bar, whom you shall have in Charge: You shall true Verdict
 give according to your Evidence. So help you God. Then call
 the Second, and swear him in like Manner, and so to Twelve; and
 neither more nor less must be sworn. Then count them Twelve
 and say: You good Men that are sworn, you shall understand, that
A. B. now Prisoner at the Bar, stands indicted, for that he, (or if
 more than one in one Indictment), that they, &c. And having re-
 cited the Indictment, say, to which Indictment he hath pleaded Not
 guilty, and for his Trial hath put himself upon God and the Coun-
 try, which Country you are; so that your Charge is to inquire
 whether he be guilty of the Felony, or Petit Larceny, or Felony
 and Burglary, whereof he stands indicted, or Not guilty: If you find
 him guilty, you shall inquire what Goods and Chattels he had at
 the Time of the said Felony and Petit Larceny was committed, or
 at any Time since: (Or if it be for Felony), then what Goods and
 Chattels, Lands and Tenements, he had at the Time of the said
 Felony committed, or at any Time since. If you find him guilty,
 you shall inquire whether he did fly for it; if you find he fled for it,
 you shall inquire what Goods and Chattels he had at the Time of
 such Flight. If you find him Not guilty, and that he did not fly
 for it, you shall say so and no more; and so hear your Evidence.
 Then call the Witnesses, and swear them one by one thus: The E-
 vidence

vidence that you shall give on the Behalf of our Sovereign Lord the King against *A. B.* Prisoner at the Bar, shall be the Truth, the whole Truth, and nothing but the Truth. So help you God. And the Evidence being given, set another Prisoner to the Bar, and say, You shall likewise understand, that *C. D.* stands likewise indicted before you this Time, for that he, &c. (and so recite the Indictment) for which he hath been arraigned, and hath pleaded thereto Not guilty, and for his Trial hath put himself upon God and the Country, which Country you are; you are therefore to inquire of him as of your first Prisoner, (that is, where the Offence is of the same Degree); and so hear your Evidence, &c. After the Evidence given a Bailiff must be sworn to keep the Jury thus, You shall swear, that you shall keep this Jury without Meat, Drink, Fire or Candle; you shall suffer none to speak to them, neither shall you speak to them your self, but only to ask them whether they are agreed. So help you God.

The Oath of the Witnesses.

The Oath of him who keeps the Jury.

The Jury coming back within the Bar, or near, the Prisoners are brought to the Bar, call the Jury; they appearing, say, Set *A. B.* to the Bar, who being there, say, Look upon the Prisoner; how say you, is *A. B.* guilty of the Felony (or as the Case is) whereof he stands indicted, or Not guilty? If they say Not guilty, bid him down upon his Knees. If they say Guilty, record it, and bid him be taken away. Then say, Gaoler, set *C. D.* to the Bar, &c. and do as before. And when the Verdicts are given, say, hearken to the Verdict as the Court hath recorded it; you say *A. B.* is not guilty of the Felony whereof he stands indicted; you say that *C. D.* is guilty of the Felony whereof he stands indicted; and so onwards for the rest *mutatis mutandis*.

Then make a Proclamation and say, All Manner of Persons keep Silence whilst Sentence is giving, upon Pain of Imprisonment. Then set the first Prisoner to the Bar, and give the Sentence; and so for the rest.

I have been the more particular herein, to shew the great Care and Solemnity the Law hath in the Trial of Man's Life.

And upon Trials of this Nature Counsel is not to be allowed to the Party, unless he can shew to the Court some Matter of Law, so that it may appear Counsel is necessary: But otherwise the Court is to be of Counsel with the Prisoner, and ought to advise him for his Good, and ought not to take Advantages too strictly against him. The Court may also receive Information from any By-stander, especially a Man of Law, who may offer any Thing, as *amicus Curie*, relating to the Trial or Manner of it.

§. 11. Counsel.

No Witnesses are to be produced and examined upon Oath against the King, but the Prisoner may offer what Witnesses he pleases, and they shall be examined, but not upon Oath; but ought to be seriously admonished to speak the Truth as if they were upon Oath.

§. 12. Witnesses.

This is now advised by the Statute

1 Anne, cap. 19. that the Witnesses must be on Oath.

Although I know it is in many Places used to try a Man for Felony the same Sessions the Indictment is found; yet it seems to me highly reasonable (if the Prisoner desire it) to be deferred, and shew Cause probable, to defer it; for that, 1. The Sessions are holden oftner than the Assizes: 2. The speedy Trials seem to be in Favour of the Prisoner: And, *Volenti non fit injuria*: 3. If a Traverse up-
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§. 13. Trial the same Sessions.

on an Indictment of Nuisance be not triable the same Sessions that it is joined, but a Man shall have Time to provide for it; much more in Matter of Life, where usually the Party is in Prison, and may well be supposed less able to provide for it, and in the Nature of it requires greater Consideration.

§ 14. Many Things (according to the Rules and Reason of the Common Law) cannot, or ought not, to be done by the Justices of the Peace but at their Sessions; for that the Exercising of their great Authority doth require a Court and publick Meeting for the Doing thereof; and by the Holding such a Court doth arise out of the Authority given them by their Commission for the due Execution of it: For the Law requires, that Things of great Import be solemnly done, as the Matters of Trial of Offenders.

Many Things there be, that by several Statutes yet in Force cannot be executed but only in the Sessions after *Easter*, or some other particular Sessions; as the Taking the Accounts of the Treasurers for maimed Soldiers and Charitable Uses, and the Appointing new Treasurers, by the Statutes of 43 *El.* 3. and 43 *El.* 2. must be done in *Easter-Sessions*. And so also must the Rates of Wages by the Statute of 5 *El.* 4. be made and published in *Easter-Sessions* yearly, or within six Weeks after; and every Justice of the Peace not present thereat (being not let by Sicknes) shall forfeit 10*l.* with others of like Nature.

Apprentice. Divers other Things there be that must be done in some Sessions, and not out of the same; as an Apprentice ill used by his Master must be discharged by four Justices of Peace in Sessions under their Hands and Seals; by 5 *El.* 4. *Badgers* must be licensed in open Sessions under the Hands and Seals of three Justices of Peace, *Quorum unus*. Every Person having any Office or Place of Trust of the King's Gift or Grant, shall in the next Sessions after his being admitted into that Office, after Receiving of the Sacrament, in open Sessions (between the Hours of 9 and 12 in the Morning) prove the Doing thereof by two Witnesses, and take the Oaths prescribed by 1 *El.* 1. and 3 *Jac.* 4. and make a Declaration against Transubstantiation, according to 25 *Car.* 2. And many other Particulars there be of that Nature.

§ 15. *Private Orders.* This also I would observe, that the Manner in some Counties is to make Orders in the Chamber after the Adjournment of the Sessions, touching several Matters of great Importance, which is a very ill Usage, and contrary to the Honour and Dignity of the Employment: And such Doings are for the most Part to promote some private Design, and to serve Turns and By-ends, but not the Publick, and are neither valid nor safe, should they be complained of.

§ 16. *Reversing Orders.* Another Thing censurable in our Justices of Peace is, their over easy Discharging and Setting aside Orders made in open and publick Sessions; whereas be it an Order made by them upon an Appeal from the Order of other Justices, as from the Order of two Justices of Peace in Case of Bastard-children, by and upon 18 *El.* 2. or be it an Order made upon Appeal from the Order of two Justices upon 14 *Car.* 2. touching Settlements: In these Cases the same nor any other Sessions can repeal these Orders, according to *Pridgeon's Case*. Nay, be it an Order made by themselves, intended to be final and made absolute, without any Time to shew Cause; I see not how another Sessions can repeal it: For such Order is in the Nature of a Judgment

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on Record, as all Things are that are done in Sessions, and may be reversed by a superior Court, but not by themselves.

By the Statute of 14 R. 2. cap. 11. none above the Degree of a Knight shall take the King's Wages for Service at the Sessions, nor above eight Knights at one Time. *Quere*, Whether a Knight shall take Wages, whereas a Banneret shall not, for so is the Original, not a Baronet. §. 17. Wages.

The Estreats of Sessions are a great Part of the Justice of Peace his Duty; and they are to be doubled, and one Part thereof unto the Justice's Hands is to be delivered to the Sheriff to levy by them, and thereout to pay the Justices of Peace their Wages by the Hand of the Sheriff, by Indenture between them to be made; and the Justices Names are to be put in those Indentures, that the Sheriff may know whom to pay, and for whom to have Allowance made. §. 18. Estreats.

14 R. 2. 11. The same Sessions may alter their own Orders, but then the first Order must be set aside, and the second entered. 6 Mod. 287.

They have Power only to quash or affirm, but not to suspend or supersede an original Order made by two Justices, to remove a poor Person. 2 Salk. 472.

CHAP. CLXXXVI.

Jurors, and Challenges to them.

THIS is that happy Way of Trial, that notwithstanding all Revolutions of Times, hath been continued beyond all Memory to this present Day, the Beginning whereof no History specifies, it being contemporary with the Foundation of this State, and one of the Pillars of it both as to Age and Consequence: That Maxim, *Ad questionem facti respondent Juratores*, being as antient and fundamental as that other, *Ad questionem Juris respondent Judices*; the one being as liable to be controuled by a Writ of Error as the other by an Attaint, both essential to the Justice of this Nation. And although Jurors are in other Things subject to his Majesty's Judges, yet they are not so in Point of Judgment, which after some Disputes was happily asserted in the Case of the *Habeas Corpora* prosecuted by *Busbet* and others, by a nigh unanimous Opinion of all the Judges. §. 1. Trial by Jurors.

This Trial is the Birth-right of every Subject of England, and is put to him by Way of Question, *How wilt thou be tried?* Which is thought to be so just and equal for him to chuse, that the Waiver of it is revenged with *paine fort & dure*; no Punishment being judged too severe for one that refuseth so just a Trial.

So happy is our Condition, that every *Englishman* (in Matters of Crime and Forfeitures) passes a double Jury; neither to my Apprehension doth the Care of the first Inquest differ from the last, but only in Consequence brought on by Custom, the Indictment being as much found to be true by the one as the other.

These Jurors are returned by the Sheriff by Virtue of a Precept to that Purpose, against which at the Common Law both the King and §. 2. Challenge.

the Party had two lawful Challenges, one peremptory, the other upon Cause shewed.

By the King.

But because Life, Liberty and Estate are all at Stake in Cases of Felony, it is provided by 33 E. 1. that the King shall not challenge peremptorily, but must shew his Cause, which shall be enquired and tried, if true, as alledged, and if found otherwise, shall be rejected.

By the Party.

Yet the peremptory Challenge remaineth for the Party, although not so amply as at Common Law, according to which he might challenge 35 without Cause shewed, and as many more as he could upon Cause shewn: But now by the Statute of 32 H. 8. 3. this peremptory Challenge is reduced to 20; to challenge peremptorily beyond which Number, is to waive his Trial; and to stand unto which is a great Offence, and grievously punished in our Law, that Person being judged unworthy of Life, whose Innocency is not clear to endure an *English* Trial.

§ 3.
Who good Jurors.

The Jurors ought to be fairly impanelled, and duly returned, by the Sheriff or other sworn Bailiff, and not at the Nomination of the Juror himself, or any other, by 11 H. 4. 9. or else the Indictment is void by that Statute. And they are to be *liberi & legales homines*: For first they must be *liberi*, not Villains born: 2. *Legales*, not convicted or attainted, and so Slaves to Punishment as well as to their own Vices; and an Outlawry in a personal Action seems to be not only a good Challenge, but also good Cause to set aside the Indictment. *Jones Rep.* 196.

* By 2 H. 5.
c. 6. now
encreased to
10 l. per
Stat. 27
Eliz. c. 6.

They must also be sufficient; 1. *Respectu census*, every one must have * 40 s. of Lands or Tenements by the Year; but for this Cause he must be challenged, or else if the Party omit to challenge him, the Trial is well made by such a Juror. 2. *Respectu rationis*, he must be no Ideot, Lunatick, &c.

† By Stat.
23 H. 8.
c. 13.

And because many Times by such Challenges to Jurors for Want of Freehold upon Trials of Offences in Cities, Boroughs, or Towns corporate, such Trials were deferred; it is † provided, that every Person being the King's natural-born Subject, that useth or enjoyeth the Freedom of such Place, and dwelleth there, having in Moveables and Substance to the Value of 40 l. clear, may be admitted on such Trials, except Knights and Esquires.

§ 4.
Medietas
Linguae.

There is a Way of Trial also peculiar to Foreigners, called *De medietate linguae*; which ought to consist of six *English* and six Foreigners, if so many be in the Place; if not, then so many as can be found there: But it Matters not whether they be of the same Nation the Prisoner is of, for they may be of another Nation; and the Party must pray it, and shew the Matter to the Justices. Yet where Persons calling themselves *Egyptians* are to be tried for such their Offence, they are ousted of this Benefit by 1 & 2 P. & M. c. 4.

§ 5.
Indictor.

It is also a good Challenge to a Juror, that he was one of the Party's Indictors, for having been of that Mind that the Prisoner was guilty, he shall not be presumed to change his Mind: This is declared by 25 E. 3. 3. to be good Cause of Challenge; for it was so also by the Common Law, and therefore is good Cause of Challenge as well in Felony as Treason.

Many other Causes of Challenge there are, as well for the King as the Party, which you may find very largely and learnedly handled by Justice Staundforde in his Pleas of the Crown, lib. 3. c. 7. which

which relate to criminal Matters only; and a most excellent Scheme you may find touching Challenges between Party and Party in my Lord Coke 1 *Inst.* fol. 156. many whereof may by a discerning Reader be easily adapted to this present Purpose, and therefore I forbear to mention them.

And because Jurors are too apt to be favourable to their Neighbours or Friends, in not presenting Offences, the Statute of 3 H. 7. c. 1. hath provided, that Justices of Peace may inquire of such Concealments by another Jury, and punish them by Amercement by their Discretions; touching which these Things are considerable.

1. The Matters which they may be thus punished for the Concealment of, must be such as by the Commission of the Peace or Statutes may be inquired of and presented before such Justices.

2. Where Inquests have been taken before Coroners, or some particular Justices out of Sessions, yet the Justices of Peace may inquire thereof, for the Words are Concealments of Inquests taken afore them or afore others. The like seems to me of Inquests in Leets or the Sheriff's Turn, in Matters whereof the Justices of Peace have also Cognisance.

3. Every Juror that shall be impanelled to enquire of such Concealments must have 40s. *per Ann.* of Lands or Tenements.

4. There must be Complaint before them made by Bill or Bills of such Concealment, if the Word Bill or Bills in that Act do refer unto the Proceedings against such Concealments; or otherwise such Concealments must be in Matters that have been complained of by Bill or Bills, and not for not presenting Things not so first complained of, but in not finding Bills drawn up and presented to them to find; for the Words are doubtful.

Such Inquiry or Concealment must be made within the Year after such Concealment.

6. Such Amercement must be reasonable, although directed to be by Discretion, which must be *sana & legalis*; and see *F. N. B.* 175. in the Writ *De moderata misericordia*.

7. It seemeth reasonable the Inquest ought to consist of as many or more as the first Inquest did; for this is a Way of Attainting a Jury which is *criminis accusare, vel suspicione criminis attingere*.

8. Notwithstanding any trivial Complaint, the Justices of Peace may take or not take such Inquests as they see Cause; for it is left to their Discretion by the Statute.

9. Such Amercement on Jurors for Concealment must be set in *plein* Sessions, not *plain* (as I take it) as the printed Book is.

If any Jurors shall either upon an Issue of a Traverse in any Thing not Felony, or which is Felony, doubt upon the Evidence what the Law is, they may (as it seems) give a special Verdict in Sessions as in the Courts of Gaol-delivery or Assizes, and that by the Common Law before the Statute of *Westm. 2. c. 3.* for that Statute is but declaratory of the Common Law. *Co. 2 Inst.* 425.

C H A P. CLXXXVII.

Trial.

§. 1. Scotland. IF any commit in *Scotland* an Offence, which by the Laws of *7 Jac. 1.* *England* is or shall be declared or adjudged to be Petty Treason, Murder, Manslaughter, felonious Burning of Houses and Corn, Burglary, Robbing of Houses by Day, Robbery, Theft or Rape, and shall fly into *England*, and be apprehended in the Counties of *Northumberland, Cumberland, Westmorland*, or within the Parts or Places lying on the North-side of the River *Tine* called *Bodlingtonshire, Northamptonshire* and *Islandshire*, the Town and County of *Newcastle upon Tine*, and Town of *Berwick upon Tweed*, or Liberties thereof: It shall and may be lawful for the Justices of Peace in their general Quarter-Sessions, or any four of them, upon due Examination and pregnant Proofs, by Warrant under their Hands and Seals to remand and send such Offenders into *Scotland*, there to receive Trial, &c.

§. 2. County. The Trial of an Offender ought regularly to be in that County where the Offence was committed; unless any Statute doth otherwise provide, as some do, viz. 1 & 2 Ph. & M. c. 4. and divers others. But if one steal Goods in the County of *A.* and carry them with him into the County of *B.* and be there apprehended; he may be tried and punished for the same in the County of *B.* for in this Case *Facinus sequitur personam.* 1 Jac. 11. Bigamy shall be tried where the Party is apprehended.

§. 3. The same Sessions. The Trial of Felonies, and of Things and Offences, for which a Person is not bailable, or the Party cannot get Bail, but lies in Prison, ought to be as speedy as may be *in favorem libertatis*: And therefore it is usual to indict them and try them at the same Sessions. See before in *Sessions*. But in other Causes of Indictment for Breach of Penal Statutes, or for Nuisances, or for other Misdemeanours not made Felony, they cannot try the Cause the same Sessions the Indictment is, as was resolved in *Bampfled's Case.* Hill. 11 Car. 1 Cro. where a Person was indicted of Extortion, and proceeded against to Conviction the same Sessions, and adjudged not good: And so was also resolved *Trin. 23 Car. 1.* upon an Indictment for Words spoken of the Queen Mother: So likewise of Justices of Oyer and Terminer. But otherwise it is of Justices of Gaol-delivery; and by the Case of 22 E. 4. Fitz. Coron. 44. it appeareth, that the Justices of Peace in their Sessions cannot proceed in a Cause criminal the same Sessions, especially where the Party requires Time to be advised.

§. 4. Foreign Plea. By the Statute 22 H. 8. 14. made perpetual by 32 H. 8. the Trial against the Party indicted shall be in the County where he is indicted for Murder or Felony, notwithstanding any foreign Plea.

Juries. All Constables, &c. of Towns in each County, shall at the general Quarter-Sessions of the Peace yearly, in the Week after the Feast of *St. Michael*, give a List of the Names and Abodes of all Persons, within the respective Places for which they serve, qualified to serve on Juries, between the Age of twenty-one and seventy Years, which List they shall deliver to the Justices, who shall cause the Clerk of the Peace to deliver a Duplicate thereof to the Sheriff of the County before

fore the first of *January* next following, to be entred among the Records of the Sessions. And no Sheriff shall impanel any Person to serve in any Jury at the Assizes, Gaol-delivery or Sessions of the Peace, who is not named in the List. Constable failing to make such Return to forfeit 5*l.* to the King.

The Justices Return shall excuse the Sheriff if he summons one ^{Justices} not qualified. And in an Action brought thereon the Sheriff may ^{Excuse.} plead the General Issue, and give this Act in Evidence, and upon Nonsuit, Discontinuance or a Verdict for the Defendant, the Plaintiff shall pay treble Costs.

The Inhabitants of *Westminster* shall be exempted from serving in any Jury at the Sessions of the Peace for the County of *Middlesex*. ^{Westminster exempted from Middlesex.}

This Act shall not extend to the City of *London*, nor to any other County of City or Town within this Realm; nor to any Corporation ^{Not to extend to London, &c.} that hath Power by Charter to hold Sessions of Gaol-delivery, or of the Peace.

C H A P. CLXXXVIII.

Judgment.

21 Jac. 6. ^{§. 1.} A Woman convicted of taking Goods above the Value of 12*d.* and under the Value of 10*s.* or as Accessary to any such Offence, for which a Man might have his Clergy, shall for the first

Offence be branded and marked in the Hand, upon the Brawn of the left Thumb, with an hot burning Iron, with a T upon the Iron, openly in Court; and be farther punished by Whipping, Imprisoning, Stocking, or sending to the House of Correction, in such Manner and for such Time (not exceeding one Year) as the Judge shall think fit, and then be delivered out of Prison.

But if she offend again, she is to have Judgment of Death, as she was to have had at Common Law.

For the Judgment in Treason and Petty Treason, the Justices not meddling therewith, I refer you to the Books, and especially to Mr. Justice *Staundforde*, who hath written learnedly and largely of the Pleas of the Crown, l. 3. c. 19. and also *Coke Tit. Pleas of the Crown*.

In Case of Felony the Judgment is usually pronounced thus: You shall be carried back to the Prison from whence you came, and from thence to the Place of Execution, and there be hanged by the Neck until you be dead, and the Lord have mercy upon your Soul. ^{§. 2.}

In Cases of Petit Larceny the Justices of Peace may award the Par- ^{§. 3.} ty either to be whipped at the Cart's Tail, or at the Whipping-post, as they shall judge convenient. But Whipping is grown the usual and ordinary Punishment, although formerly it was uncertain, and punished by Pillory or cutting off the Ears. *Co. 4 Inst. 218.* ^{Petit Larceny.}

By many Statutes peculiar Punishments are appointed for several Offences, as *Pillory, Stocks, Imprisonment, Binding to the Good Behaviour, &c.* But in all these Cases no Room is left for the Justices Discretion, for they ought to give Judgment, and to inflict the Punishment in all the Circumstances thereof as such Statutes do direct. For if the King cannot alter the Manner of Execution, as to ^{§. 4.} direct

direct a Person to be beheaded that hath Judgment to be hanged; much less can an inferior Court alter a Judgment and Sentence directed by Act of Parliament. And therefore the Course taken up in some Counties, to admit the Party indicted for Breach of Penal Laws, to submit with a Protestation of Not guilty; and therefore forbear to inflict the Penalty imposed, and so mitigate the Penalty, is an Offence for which they are punishable: For thereby,
 1. The Sentence imposed by Act of Parliament is quite altered.
 2. The Mischiefs intended to be remedied go unredressed. 3. Many Times the Poor, who are by Direction of several Acts to have the Penalty, are thereof defrauded.

C H A P. CLXXXIX.

How Justices of Peace may defend themselves against Suits.

- §. 1. *General Issue.* IF any Action, Bill, Complaint, or Suit upon the Case, Trespass, Battery, or False Imprisonment, shall be brought any where against a Justice of Peace, &c. for any Thing done *virtute officii*, it shall be lawful for them, or any other that act in their Aid, Assistance or Command, to plead the general Issue, and to give the special Matter in Evidence. If the Verdict pass for the Defendant, or the Plaintiff be Nonsuit or discontinue, the Judge shall allow double Costs.
- §. 2. *County.* Which Statute was to continue but for seven Years, but is made perpetual by 21 Jac. 12. and it is thereby enacted, That all Actions upon that Statute shall be laid in the proper County where the Fact was done; and if upon the Trial the Plaintiff shall not prove the Fact done in that County where the Action is laid, the Jury shall find the Defendant Not guilty: And in Case of such Verdict, Nonsuit or Discontinuance, the Defendant shall have his double Costs.
- Constable.* A Constable may make a Deputy, and may plead the General Issue, and thereby take Benefit of 7 Jac. 5. as was resolved Mich. 13 Jac. B. R. *Phillips contra Winchcombe*, Moor's Rep. p. 845. *Bulstr.* part 3. p. 77.

C H A P. CXC.

Clergy.

- §. 1. *What.* WHAT Clergy is, with the Beginning and Use thereof, see Hobart Rep. *Searle and Williams's Case*, p. 288.
- §. 2. *By Common Law.* By the Common Law one committing Sacrilege shall not have his Clergy: *Frustra enim petit auxilium Ecclesie, qui peccat contra Ecclesiam.*

Alfo

Also for High Treason no Clergy was allowed at common Law,
 1 *Inst.* 150, 336. But in all other Cases the Offender might; and
 some say in all Treasons but those against the King's Person.

By the Common Law every Person in Holy Orders might have
 the Benefit of the Clergy, and so might others also, by 4 *H.* 7.

13. But as to all, except those in Holy Orders, it is restrained to *once*
 by that Statute: And every Person so convicted for * *Murder* to be
 marked with an M. in the Brawn of the left Thumb, and for o
 ther Felony with a T and these Marks to be made by the Gaol-
 er in open Court before the Judge. * Formerly
the Clergy
was allow-
ed for
Murder.

By the Stat. of 28 *H.* 8. c. 1. Persons in Holy Orders shall be burnt
 in the Hand, and used as others be. See 32 *H.* 8. c. 3.

And by the Statute of 23 *H.* 8. 1. 28 *H.* 8. 1. 32 *H.* 8. 3. Clergy
 is taken away in these Cases. §. 4.
Where ta-
ken away.

1. Persons found Guilty after the Laws of the Land for *petit*
Treason.

2. For wilful Murder of Malice prepenfed or Poisoning.

3. Or for robbing of Churches or Chapels, or other Holy Places.

4. Robbing any Persons in their * dwelling House, or dwelling
 Place, or any Parcel thereof, the Owner or Dweller of the same
 House, his Wife, Children, or Servants then being within the same,
 or within the Precinct thereof, and put in Fear or Dread by it, or
 whether they be waking or sleeping. * In the
Day-time,
and taking
from thence
to the Value
of 5 s. the
no Person
is in it. 3 & 4 W. & M.

5. Or for robbing any Person in or near the Highway.

6. Or for wilful burning any dwelling House, or Barn wherein
 Grain or Corn shall happen to be.

7. Any found guilty of Abetment, Procuring, Helping, Main-
 taining, or Counselling to such Offences, by 25 *H.* 8. 5. & 5 *El.* 17.

8. No Person convicted of Buggery shall have his Clergy.

9. Or of breaking any House by Day or by Night, and any Person
 being therein, and put to Fear or Dread.

10. Or for the felonious Stealing of Horses, Geldings, or Mares.

But by 1 *E.* 6. 12. Clergy was allowed in all other Cases of Fe-
 lony; yet since that Time Clergy hath been taken away from feve-
 ral Persons; as.

11. Such as shall command, hire, or counsel another to commit
 or do any petit Treason, or Murder, or Robbery in any dwelling
 House or Houses; or to commit or do any Robbery in or near any
 Highway in the Realm of England, or any the Queen's Domini-
 ons; or to commit or do any Robbery in the Marches of England
 against Scotland; or to burn any House or Barn having Corn in it.

12. If any rob any Person in any Booth or Tent, in any Fair or
 Market, the Owner, his Wife, Children, or Servant then being
 therein.

13. All Persons being transported into England called Egyptians,
 staying here above a Month.

14. Any Person seen or found in the Company or Fellowship of
 Vagabonds, calling themselves or called Egyptians, or counterfeit-
 ing or disguising themselves by their Apparel, Speech, or Behaviour
 like them, and so remaining a Month at one Time or several Times.

15. All Persons convicted of the felonious Taking away of Mo-
 ney, Goods or Chattels, to 5 s. or upwards, in any dwelling House,
 or

‘ or Part thereof, or any Out-house belonging to and used with any dwelling House, altho’ no Person be in the House.

16. ‘ Nor for the felonious Taking of any Money, Goods, or Chat-^{8 El. 4.} tels from another Person *privily*.

17. ‘ Or he that doth stab or thrust any Person that hath not a Wea-^{1 Jac. 8.} pon drawn, or that hath not first stricken him, if the Party die with- in 6 Months.

18. ‘ Popish Recusants or Schismaticks commanded to abjure, and^{25 El. 1. & 2.} do not depart, or do return again.

19. ‘ Or any Persons receiving, &c. a Jesuit, Seminary Priest, or^{27 El. 2.} other Priest born in *England*, ordained by any Authority from *Rome*.

20. ‘ Or any convicted or attainted for any Offence made Felony^{3 H. 7. 2.} by 3 H. 7. 2. *viz.* taking any Maid, Widow or Wife of Substance in Lands or Goods, or after Marrying her or Assenting to it, or Def- ling and Receiving her, knowing it.

21. ‘ After Conviction of Forgery the second Time committing^{5 El. 14.} that Offence.

22. ‘ Nor any committing Rape or Burglary.

23. ‘ Exercising Conjuraton or Invocation, whereby any Person^{18 El. 7.} is killed or lamed.

24. ‘ Nor a Soldier departing without Licence from his Captain.^{1 Jac. 12.}

25. ‘ Nor a wandering Souldier or Mariner that offendeth against^{2 Ed. 6. 2. 39 El. 17.}

26. ‘ Or such as steal Cloth from the Tenters.^{22 Car. 2.}

27. ‘ Nor such as imbezil his Majesty’s Stores.^{22 Car. 2.}

28. ‘ Nor such as maliciously maim any Person. And by many o-^{22 & 23 Car. 2. 18 El. 7.} ther Statutes.

§. 5. ‘ Every Person having his Clergy shall be forthwith delivered out of Prison, and not to the Ordinary; yet the Justices may detain him in Prison as a further Punishment for any Time not exceeding one Year, and shall (notwithstanding his Admission to his Clergy) answer any other Offences.

Benefit of Clergy.

A Transcript certified by the Clerk of the Crown, of the Peace, or^{3 & 4 W. & M. c. 9.} of the Assizes, concerning the Tenor of the Indictment, and of the Person’s having had the Benefit of his Clergy or of this Act, to the Judges or Justices in any other County, and shall be a sufficient Proof that such a Person hath had the Benefit of his Clergy, or of this Act.

C H A P. CXCI.

Informations. Actions Popular.

§. 1. Kinds.

‘ THE Civil Law hath two Sorts of Informers; 1. *Voluntarius* as our common Informer. 2. *Necessarius, qui invitatus facit propter publici officii necessitatem*; as with us the King’s Attorney, the Clerk of the Crown in the King’s Bench, who is *Capitalis Coronator Domini Regis*, which they call *Delator stationarius, fiscalis*, which with us is Honorary.

‘ The

' The *Delator voluntarius* is with us more necessary than creditable; for great have been the Complaints against them, and many and severe Laws have been made against them; yet such as govern themselves well are to be encouraged as Furtherers of the publick Good.

18 El. 5. 1. ' Every Informer shall exhibit his Information in Person, or by Attorney, and not by Deputy. §. 2. How Informations may be exhibited, when, and by whom.

2. ' None shall be admitted to pursue against any Person upon any Penal Statute, but by Information or Original Action, and not otherwise.

3. ' Upon every such Information a Note shall be made of the Day, Month and Year of the Exhibiting thereof into any Office, or to any Officer, without antedating thereof, and to be accounted of Record from that Time and not before.

4. ' No Process shall Issue until the Information be exhibited in Form aforesaid; and upon such Process shall be indorsed as well the Person's Name that pursueth, as the Statute on which it is brought.

5. ' The Clerk that maketh out Process contrariwise shall forfeit 40 s. a Moiety to the Queen, the other Moiety to the Party against which such Process is made, to be recovered in any Court of Record, &c.

6. ' No Informer shall agree with the Offender before Plea pleaded, nor after, without Leave from the Court.

7. ' Every Person (except Clerks in Court) offending against the Act, or making any Composition, or taking any Money, Reward or Promise of Reward, without Consent of some of the King's Courts at *Westminster*, the Party convicted shall stand two Hours in the Pillory in some Market next adjoining, and be disabled to be an Informer, and forfeit 10 l. a Moiety to the Queen, and the other Moiety to the Party grieved, to be recovered in any Court of Record.

8. ' If any Informer shall willingly delay his Suit, or shall discontinue, or be nonsuited, or a Verdict pass against him, and Judgment, he shall pay the Defendant his Costs, and have usual Executions.

' But that Act shall not extend,

1. ' To Officers of Record, who in Respect of their Offices have used to exhibit Informations,

2. ' Nor to Informations upon the Statutes of Maintenance, Champerty, buying of Titles, or Embracery, as to the Parties grieved.

3. ' Nor to Persons to whom any Penalty or Forfeiture is given certainly, and not generally to him that will sue.

' Justices of Peace in their Sessions have Authority to hear and determine Offences against that Act. This Act was made temporary, but is made perpetual by 27 El. 10.

31 El. 5. ' No Person shall be admitted to be an Informer, that by any of the Queen's Courts is disabled for any Misdemeanor. Who may inform.

' In every Informer's Declaration the County shall be alledged where the Offence was done; and the Defendant may traverse the County, except in *Champerty*, *Buying of Titles*, or *Extortion*, and Offences against 1 El. 11. & 1 El. 20. for *Tunnage and Poandage*, or for *Usury*, or for *Regrating*, *Forestalling*, or *Ingrossing*, where the Penalty exceeds 20 l.

- Time.* ' Any Suit for any Offence whereof the Forfeiture is given to the King alone, shall be brought within *two Years after the Offence*, and not after. And where the Forfeiture is given to the King and any other, *within one Year after the Offence*. Except upon the Statute of Tallage by the Party that will sue, or in his Default within two Years after that by the Queen. And any Suit brought otherwise is void.
- ' All Suits for using any *unlawful Game*, or not using any lawful Game, or not having Bows or Arrows, or using a Trade not having been an *Apprentice*, shall be heard and determined in the Sessions or Affizes of the County, &c. and not out of it.
- §. 4. *Covin.* ' If any Person sue any Action popular, and the Defendant plead a Recovery in an Action Popular in Bar, or that before that Time he had barred the Plaintiff in such Action, the Plaintiff may aver such Recovery or Bar was by *Covin*; and upon such Covin found the Plaintiff shall have Judgment, and the Defendant so attainted or condemned of Covin shall have Imprisonment for 2 Years by Process of *Capias* or Outlawry, as well at the King's Suit as at any other; and the Release of the Party shall not avail the Defendant. 4H. 7. 22.
- §. 5. *County.* ' All Offences to be committed against any penal Statute, for which any Informer or Promoter may ground any Suit, &c. before Justices of Assize, *Nisi Prius*, Gaol-delivery, *Oyer and Terminer* of the Peace in their General Sessions, shall be commenced, sued, prosecuted, tried, recovered and determined, by Action, Bill, Plaint, Information, or Indictment, before the Justices of Assize, &c. or before the Justices of Peace of the County, City, Borough, or Town Corporate and Liberty in any the Courts, Judicatures or Liberties, at the Choice of the Prosecutor, and not elsewhere. 21 Jac. 4.
- Process.* ' Like Process in every Popular Action, Bill, Plaint, Information, or Suit to be prosecuted according to the Purport of this Act, be had and awarded as in Actions of *Trespas vi & armis* at the Common Law. 21 Jac. 4.
- ' Excepted, &c. all Offences for Recusancy against those that shall not frequent the Church, for *Champerty*, *Maintenance*, buying of Titles, or for transporting of Gold or Silver, Ordnance, Powder, Shot, Munition, Wool, Woolfel or Leather, or for Tunnage, Poundage, Impost, Prifage, Subsidy, &c. 21 Jac. 4.
- Oath.* ' No Officer shall file any Information, Bill or Plaint, Count or Declaration, grounded upon any penal Statute, which by that Act are to be tried in the proper Counties, until the Informer hath made Oath before some Judge of the Court, that the Offences were not committed in other Counties than where the Information, &c. is laid. 21 Jac. 4.
- General Issue.* ' The Defendant to any Information, &c. to be exhibited on the Behalf of the King, or by any other, or on the Behalf of the King and any other, may plead the General Issue, and give the special Matter in Evidence. 21 Jac. 4.
- ' Now touching Informations take these Rules.
- §. 6. *Rules.* 1. ' One Person cannot exhibit two Informations in the same or in several Courts; if he do, the Defendant may plead the first in Bar of the Second. Hob. 209.

2. ' If two Informers exhibit Informations against the same Person, ^{Hob. 128.} for the same Offence on the same Day, they are both void, and they may be pleaded the one in Bar of the other, for as much as there is no Right of Priority.
3. ' Informations and Suits on penal Statutes are *stricti juris*, and excepted out of all the Statutes of Jeofails.
4. ' The Statute of 21 *Jac.* 4. gives no Jurisdiction to Justices of Peace where they had none before; but only appoints, that where Informations might have been brought in the Courts at *Westminster*, and before Justices of Peace, they shall now be brought before Justices of Peace only. *Farington, Trin. 4. Car. Cro. Green's Case. Mich. Car. 1. Cro.*
5. ' The Statute of 31 *El.* 5. extends not to an Action or Information by the Party grieved; for he may bring it in any County. *Allen's Case. Mich. 40. El. Cro. 645.*
6. ' If Jurisdiction be given to the Sessions to hear and determine, and doth not say by Information, this shall be by Indictment and not Information. *Jones Rep. p. 133.*
7. ' Where the Suit is directed to be in any Court of Record, or in any the King's Courts of Record, that is intended the Courts at *Westminster. Jones Rep. 193.*
8. ' Where an Information is *tam pro Dom' Rege quam pro seipso*, if the Informer die, yet the Attorney General may prosecute for the King; and although the Use is that the Attorney General only join the Issue, yet he cannot hinder the Prosecutor for his Part. 3 *Inst. cap. Informers.*

Informations.

THE Clerk of the Crown in the King's Bench shall not without ^{4 & ; W. cap. 18.} express Order of that Court, exhibit, receive, or file any Information, for any *Trespass, Battery, or other Misdemeanors*; or issue out any *Process* thereon before he shall have a " Recognizance from the Prosecutor in the Sum of 20*l.* effectually to prosecute the Information, and to abide the Order of the Court; and the said Clerk shall record and file a *Memorandum* thereof in some publick Place in his Office, for all Persons to see without any Fee.

* Which the Clerk of the Crown, or any Justice of the Peace of the County where the Cause of the Information doth arise, may take.

If the Informer shall delay the Prosecution, or a Verdict pass against him, the Court shall award Costs, unless the Judge shall certify on the Record that there was a reasonable Cause for the Information.

This Act doth not extend to any other Informations than such as are exhibited in the Name of the King, Coroner, or Attorney in the Court of King's Bench, called the Master of the Crown-Office.

Upon a Motion to file an Information in Nature of a *Quo Warranto* ^{Salk. 376.} against the Mayor and Aldermen of *Hertford*, to shew Cause by what Authority they admitted Persons to be Freemen of that Corporation, who did not dwell therein; it was granted, but it was afterwards moved to set aside the Process, because no Recognizance was given pursuant to the said Statute above mentioned; and the Question was, whether this Matter was within the Statute, because it was to try a Right, when the Statute mentions *Batteries, Trespasses, and other Misdemeanours*, which must be intended Misdemeanours of an inferior Nature, but adjudged that this Power usurped by the Mayor, &c.

was a *Misdemeanour*, and the Information for it might be vexatious, for the Process was set aside, but the Information stood.

Upon Informations, for Trespasses, Batteries, and other Misdemeanours, one Justice may take a Recognizance of 20*l.* of the Informer, that he will prosecute the Cause with Effect, and abide such Order as the Court shall direct.

C H A P. CXCII.

Mayor or Magistrate, where he may act as a Justice of Peace by some particular Statutes.

- Customs.* 'THE next Magistrate may commit to Prison until next Sessions such as shall abuse an Officer of the Customs. 14 Car. 2. c. 11. Parl.
- Preachers.* 'Mayor or chief Magistrate of any City or Town Corporate may commit any preaching a Sermon or Lecture disabled by the Act to do. 14 Car. 2. c. 14. Parl. 1.
- Carriage.* 'Mayor or chief Officer may convict any of Neglect of sending Carriages for the King's Use. 13 Car. 2. c. 8.
- Custom.* 'The chief Magistrate of the Port or Place next adjoining may (upon Complaint) grant a Warrant to search for uncustomed Goods. 12 Car. 2. c. 19.
- Alehouses.* 'Mayors and head Officers may convict unlicensed Alehouse-keepers, and levy the Penalties. 3 Car. 1. c. 3.
- Sunday.* 'The Mayor or head Officer may put in Execution the Statute of 3 Car. 1. c. 1, for Breach of Sunday. 3 Car. 1. c. 1.
- Swearing.* 'The Mayor, &c. may punish Offenders for profane Swearing or Curfing. 1 Jac. 9. c. 20. 21 Jac. c. 20.
- Armour.* 'Mayor and Bailiffs of Cities and Boroughs may execute the Statute against riding armed. 2 E. 3. 3.
- Dying.* 'Mayor or head Officer may seize and burn Logwood, *alias* Blockwood. 23 El. 9.
- Beer.* 'Mayors, &c. in Corporations may assess the Prices of Ale and Beer. 23 H. 8. 4.
- Games.* 'Mayors, &c. may commit Persons they find Playing at unlawful Games. 33 H. 3. 9.
- Weights.* 'Mayors, &c. may punish Offenders touching false Weights. 11 H. 7. c. 4.
- Servants.* 'Mayors and head Officers may hear and determine Matters touching Servants and Apprentices. 5 El. 4.
- 'The Mayor and head Officers may enquire of Offences against *El.* 2. 11 El. 2.
- Plague.* 'Mayors, &c. may make a Tax for Relief of Persons and Places visited with the Plague. 1 Jac. 31.
- Wood.* 'Mayors, &c. and head Officers may inspect and assess the Affize of Talewood, Billet and Faggot. 43 El. 14.
- Orchards.* 'Mayors, &c. may punish the Offenders against *El.* 7. for robbing Orchards, &c. 43 El. 7.
- Artificers.* 'Mayors, Bailiffs, &c. may enquire of Offences of Artificers and Victuallers. 2 E. 6. 15.

- 8 El. 9. ' Mayors, Bailiffs, and head Officers may assels the Prices of Beer *Vessels*.
 23 H. 8. 4. c Vessels.
 11 H. 7. 23. ' Mayors, Bailiffs and Governors of Cities, Towns and Markets, *Vessels*.
 22 E. 4. 2. c may search and guage all Vessels for Salmon, Herrings and Eels.
 18 H. 6. 19. ' Mayors, Bailiffs and Ministers of the Port, &c. may arrest Sol- *Soldiers*.
 diers departing without Licence.
 1 Jac. 22. ' Mayors, Bailiffs, &c. may hear and determine Matters touching *Leather*.
 Leather, and examine, &c.

C H A P. CXCIH. *Vide* CXXXII.

Process.

THE Forms of Process upon Indictment of Trespas, which also the Justices of Peace out of their Sessions may in some few Cases make out against Offenders.

Note, That as the Authority of making Process upon Indictments is given by exprefs Words in the Commission to the Justices of Peace in their Sessions; so it is given by exprefs Words in some Statutes to the Justices of the Peace (yea to one Justice of the Peace) out of their Sessions, to make out Process upon Indictments found (before them) against Offenders, or upon Information against them, as if they were indicted of Trespas in Sessions, as you may see here *Tit. Forcible Entry*, & *Tit. Sheriffs, antea*.

Lamb. 317. 501. Also in other Cases, and by some other Statutes, this Authority of making out Process (against Offenders) by the Justices of Peace out of their Sessions is implied of Necessity: As where any Statute doth give Power to the Justices or Justice of Peace out of their Sessions to enquire, hear and determine, (as *hic Tit. Riots*, *Tit. Transportation*, *Tit. Tyle*, & *Tit. Weights*;) in these and in all other such Cases, where the Justices may enquire, hear and determine, there after Indictment or Presentment of the Offence, the said Justices may make out Process against such Offenders, to cause them to come and answer; for unless the Offenders do come in, either *gratis* or by Process, the Justices cannot proceed to hear and determine. Again, in the former Cases of Transportation, Tyle and Weights, as also in all other Cases where any Statute doth give Power to the Justices of Peace out of their Sessions to hear and determine, either upon the Confession of the Offenders, or upon Examination of the Witnesses, (whereof see *antea*, *Tit. Hear and Determine*, &c. See 5 E. 6. 14. against Fore-stallers;) in all such Cases it seemeth the Justices of Peace may grant out their Process or Warrant against such Offenders, to appear before them, to answer to their said Offences: And thereupon may proceed to examine, hear and determine the Offence, as being convicted thereof upon such Confession or Examination, without any Indictment or Process.

The Difference between Process and the Precept or Warrant of the Justices of Peace, seems to be this:

The Precept or Warrant of the Justice is only to attach and convene the Party before any Indictment or Conviction, and may be made

made either in the Name of the King or of the Justice, as is before shewed.

Process is always in the Name of the King, and usually after an Indictment found, or after other Conviction.

Now these Processes seem to be as followeth.

THE Justices of Peace for the Offences mentioned in 27 *El.*^{27 El. 12.} 12. for Sheriffs, &c. not taking the Oaths upon Conviction, may award Execution for the Forfeitures by *Fi. fa.* Attachment, *Capias*, or Extent.

Process upon 4 & 5 *P. & M.* 3. touching Soldiers, &c. shall be^{4 & 5 P. & M. c. 3.} as upon Indictments of Trespas at Common Law.

The Justices of Peace before whom any Person shall be indicted^{1 E. 6. 1.} for depraving or speaking irreverently of the Sacrament contrary to 1 *E. 6.* 1. may award two *Capias* and an Exigent, as well into the County where the Party is indicted, as into any other County.

First, if the Offender be absent, a *Venire fac.* shall be awarded by the Justice or Justices of Peace under his or their own *Teste*. And if thereupon the Offender be returned sufficient, (and maketh a Default) then *Distingas* is awarded, which *Distingas* shall go forth infinite till the Offender come in. But if a *Nihil habet*, &c. be at the first returned, then after the *Venire fac.* a *Capias*, then an *Alias*, and after a *Pluries*, shall go forth, and after that an *Exigent*, till the Party be taken, or yield himself, or else be outlawed.

1 *Venire fac.*
2. *Distingas* or *Capias*.

And these are the ordinary Processes upon all Indictments of Trespas against the Peace, or of other Offences against penal Statutes, not being Felony, or a greater Offence, (if it be not otherwise ordained by Statute.) But the Process is commonly grounded upon an Indictment, and is only to cause the Offender to come in, and to make his Answer; and therefore if the Offender be present, and confess such Indictment, Information, or Offence, there needeth no Process at all, for he shall be forthwith committed to Prison, there to remain until he hath paid Fine, or given Security for it. 1 *H. 7.* 20. & *Br. Imp.* 100.

Also these Processes shall be always directed to the Sheriff, (who is the immediate Minister and Officer of the King to execute all Process) except the Sheriff himself or his Officers be Parties: But if the Justice of Peace be to grant out Process against the Sheriff, Under-Sheriff, or their Officers, offending contrary to the Statute 8 *H. 6.* c. 9. or 11 *H. 7.* c. 15. which you may see here before; it seemeth such Process shall be directed to the Coroners of the County, and shall be served by them. And so are divers Books, as 2 *H. 6.* 12. 8 *H. 6.* 30. 9 *H. 6.* 11. & 18 *Ed.* 4. 7. and others. And so also the Oath of the Justices of Peace seemeth to bind them.

Note also, that this Process ought always to be made in the Name^{Br. Franc.} of the King: And for that the King is Party, it must be with a *Non*^{18.} *omittas propter aliquam libertatem*, &c. But the *Teste* thereof may be under the Name of the Justice of Peace.

If the Offender be within any Liberty or Franchise, the Sheriff is to enter the Franchise, and to execute the Process himself, (and not to write to the Bailiff of the Franchise, because the King is a Party.) See 41 *Ass.* 17. *Br. Franch.* 18. 31.

The

The Forms of these Processes to be made by the Justice of Peace out of the Sessions, seem to be as followeth.

The *Venire Facias* thus.

GEORGIUS, Dei gratia, Angliæ, Scotiæ, Franciæ & Hiber-^{Venire Fa-}
niæ, Rex Fidei Defensor, &c. Vic' Com' Cantabr' salut'. Preci-
pimus tibi quod non omittas propter aliquam libertat' in balliva tua,
quin venire fac' A. B. de D. in dicto Com' tuo Teoman, coram R. M.
Mil' & D. M. Armig' duobus Justic' nostr' ad Pacem conservand' nec-
non ad diversas Felon' Transgr' & alia malefacta in dicto Com' per-
petrat' audiend' & terminand' assignatis, apud Linton in Com' tuo,
20 die Martii prox' futur' ad respond' nobis super quibusd' articulis
versus ipsum A. B. presentatis. Et habeas ibi tunc hoc Precept'.
Teste R. M. & M. D. apud Linton 30 die, &c.

The *Distringas* thus.

GEORGIUS, Dei gratia, Angliæ, Scotiæ, Franciæ & Hiber-^{Disting-}
niæ Rex, Fidei Defensor, &c. Vic' Com' Cantabr' salut'. Pre-
cipimus tibi quod non omittas propter aliquam libertat' in balliva tua,
quin eam ingrediaris, & distringas A. B. de D. in Com' tuo Teoman,
per omnia terras & tenementa, &c. Et quod de exitibus eor' respon-
deas, &c. Et quod habeas corpus ejus coram, &c. Justic', &c. ad re-
spond', &c. Teste, &c.

The Writ of *Capias* thus.

GEORGIUS Dei gratia, Angliæ, &c. Vic. Com. Cantabr.^{Capias.}
salut'. Precipimus tibi quod non omittas propter aliquam liber-
tat' in Ball' tua quin eam ingred' & capias I. D. de A. in Com' tuo
Teoman, &c. si invent' fuerit in Balliva tua, & eum salvo custod' fac'
ita quod habeas corpus ejus coram R. M. Mil' & M. D. Armig' duo-
bus Just' nostris ad Pacem conservand' necnon ad diversas Felon'
Transgr' & alia malefacta in eodem Com' tuo perpetrat' audiend' &
terminand' assign. apud L. in Com' tuo, 20 die Martis prox' futur', ad
respond' nobis de diversis Transgr. & Offensis, de quibus ipse indictat.
existit. Et habeas ibi tunc hoc Breve. Teste R. M. & M. D. apud
Linton sexto die Jan', &c. anno regni nostri, &c.

Ad quem diem Will. Wendy Mil. Vic. Com. pred. retorn. quod ipse
non est invent. in Balliva sua, & ipse non venit. Ideo precept. est
sicut alias, &c.

The *Alias Capias*.

GEORGIUS, &c. Vic', &c. Precepimus tibi sicut alias tibi Alias.
precepimus, quod non omittas, &c. (Verbatim ut supra.)
Ad quem diem, &c. (ut supra) & ipse non venit. Ideo precept' est
Vic' sicut pluries, &c.

The Party may appear gratis, and so avoid the Attachment or Ar-
resting of his Body; and that is the Cause that the Entry is, *Et ipse
non venit.*

The

The *Pluries Capias*.

Pluries.

GEORGIUS, &c. Vic', &c. salut'. Precipimus tibi sicut pluries tibi precepimus, quod non omittas, &c. (ut supra.)
Ad quem diem Willielmus Wendy Mil' Vic' Com' pred' retorn' quod pred' E. F. non est invent' in, &c. & ipse non venit. Ideo precept' est quod exigi fac', &c.

The *Exigent*.

Exigent.

GEORGIUS, &c. Vic', &c. salut'. Precipimus quod exigi fac'.
E. F. de A. in Com. tuo Teoman, quousq; secund' legem & consuetudin' Regni nostri Angliæ utlagatur, si non comparuerit, & si compar. tunc eum capias, & salvo custod. fac. ita quod habeas corpus ejus cor. R. M. Mil. & M. D. duobus Just. ad Pacem nostram conservand. nec non ad diversas Felon. Transgr. & alia malefacta in eod. Com. tuo perpetrata audiend. & terminand. assign. apud L. in Com. tuo, 20 die Sept. prox. futur. ad respond. nobis de diversis Transgr. Contempt. & Offensis, de quibus ipse indictat. existit. Et habeas ibi tunc hoc Breve. Teste R. M. & M. D. apud L. 8 die Sept. anno Regni nostri, &c.
Ad quem diem Willielmus Wendy Mil. Vic. Com. pred. retorn. quod ad Com. tent. apud Cantabr. 20 die Aug. anno Regni Dom. Regis nunc, &c. & sic ad quatuor alios Com. tunc prox. sequent. ibid. tent. pred. E. F. exactus fuit, & non comparuit. Ideo utlagat. fuit.

These Processes are sent out, to the End that either the Party shall come or be brought in to make his Answer, and to be justified by the Law; or else that for his Contumacy he shall be outlawed, and so be deprived of the Benefit of the Law. But the Power of the Justices of Peace endeth with the Utlary, for they can make no *Capias Utlagatum*, but must certify the Utlary into the King's Bench. Lam. 503.

Also all such Processes (as well of *Capias*, &c. as of Utlary) may be staid by a *Superfedeas* issuing from other Justices of Peace (out of Sessions) testifying that the Party hath come before them, and hath found Sureties for his Appearance to answer to the Indictment, or to pay his Fine, &c. See before. Lam. 500.

Note, That this Authority of the Justices of Peace in sending out their Processes (being out of their Sessions) is beyond the Bounds of their Commission. And again, by the Commission one Justice of Peace alone cannot grant a *Capias*, nor other Process, but two Justices of Peace at the least must do it, and that sitting the Court, and in their Sessions; and yet nevertheless in these former Cases the Statutes (expresly, or by necessary Implication) giving such Authority to the Justices of Peace, or to one Justice alone, and that out of the Sessions, are sufficient Warrant and Commission to the Justices of Peace therein, as it seemeth. The Com. missions, 14 H. 7. 8. Br. P. 6, 7.

C H A P. CXCIV. Vide CXXXIII.

Traverse.

Lam. 325.

AFTER that such Proceſs (or other Proceſs *ad reſpond'*) is awarded againſt the Party, it ſeems he may come in and yield himſelf to pay his Fine: Or elſe he may offer his Traverse to the Indictment found againſt him before the Juſtices of Peace, and the Juſtices ought to allow him his Traverse againſt it; which Traverse is to take iſſue upon the chief Matters of the Indictment, or to deny the Point of the Indictment. The formal Words of the Traverse are in Latin, *Absque hoc*, &c.

See Lam.

522, 523.

& hiccapi.

But although the Juſtices of Peace have Power in divers Caſes as aforeſaid, (out of their general Sessions,) to take Indictments, and after ſuch Indictments found to award a Proceſs *ad reſpondendum* againſt Offenders, and to hear and determine thereof; and the Offenders alſo have Liberty to come in and to ſpeak, and may answer for themſelves, and may offer their Traverse, and that the Juſtices of Peace are to allow of and to receive them. Yet *quare* whether the Juſtices of Peace (out of their general Sessions) may try ſuch Traverse being tendred to them; (except in Caſes of Riots and Forcible Entries) without which Trial all the reſt may ſeem idle. (*Vide hic*.) Or upon the Traverse tendred they muſt certify or ſend the Inquiſition of the Indictment ſo found before them in the King's Bench, or unto their Quarter or General Sessions of the Peace, there to be tried and determined. Howſoever it is ſafeſt in all Caſes, (after ſuch Traverse tendred) to certify or deliver ſuch Inquiſition or Indictment into the King's Bench, or to their next Quarter-Sessions, and ſo to refer the Trial of the Traverse, and farther Proceedings therein, to them: See hereof Tit. *Rogues & Forcible Entry*.

C H A P. CXCV. Vide CXXXIV.

Certiorari.

THE Return of a *Certiorari* ſent to remove an Indictment may be thus: Firſt, upon the Backſide of the Writ of *Certiorari* indorſe theſe or the like Words:

Executio iſtius Brevis patet in quadam Scheda eidem Brevi annexata;

And that Schedule may be thus.

Cantab.

EGO M. C. Armig' unus Cuſtod' Pacis ac Juſt' Dom' Regis ad Pacem in dict' Com' Cantabr' conſervand' necnon ad diverſas Felon' Tranſgr. & alia malefacta in eodem Com' perpetrata audiend' & terminand' assign' virtute iſtius Brevis mihi delibet, indictment' illud (unde in dicto Brevi fit mentio) una cum omnibus indictment' tangen- tibus, in Cancellar' dicti Dom. Regis diſtincte & aperte ſub ſigillo meo

Rrrr

cer-

certifico. In cujus rei testimonium ego pref. M. D. his presentibus sigillum meum apposui. Datum apud W. 2. die mensis Aug. anno Regni, &c.

Then take the Record of the Indictment, and close it within the Schedule, and seal and send them up both together with the *Certiorari*.

Now to shew what is farther meet for the Justice of Peace to know concerning this Writ of *Certiorari*, and their Certifying or Return thereof.

After an Indictment found before Justices of Peace, a *Certiorari* is procured by the Means of some Party indicted or grieved, thereby to remove such Indictment from the said Justices, and to convey it to Justices of a higher Authority, to the End the Party may either traverse such Indictment above, or may there avoid it for Insufficiency of Form or Matter.

Although the *Custos Rotulorum* keep the Records, yet must the Justices return the *Certiorari*; for the Writ is directed to them, and not to him; and the Record it self must be returned, and not *Tenorem Recordi*. Hob. 135.

And this *Certiorari* is the King's Writ, issuing sometimes out of the Chancery, and sometimes out of the King's Bench, and may be directed to any inferior Court of Record, or Officer of Record, (as to a Justice of Peace, Sheriff, Coroner or Escheator) to be certified of any Record which is before any of them. And first an *Alias*, then a *Pluries*, and lastly an Attachment lieth against them that should send it, (if the Record be not certified accordingly). Or it seemeth a *Subpena* is used at this Day. Fitz. 245. a.

If it be returnable into the Chancery, then the Words are, *In our Chancery*; and if into the King's Bench, then the Words are, *Nobis mittatis*; and if into the Court of Common Pleas, then *Coram Justis nostris de Banco*.

This Writ is not to be slighted, nor are any Proceedings to be after the Delivery thereof, although the Return be past; for by the Delivery the Hands of the Justices are closed. A Forcible Entry was found, and Restitution awarded but not executed. A Writ of *Certiorari* comes to a Justice of Peace, and he refuses to open it till he had spoke with his Companions. Restitution was in the King's Bench, prayed and granted, and the Justice of Peace much chid. *Telo. 32.*

The *Certiorari* may be sometimes to remove and send up the Record it self, and sometimes but only the Tenor of the Record, (as the Words therein be) and it must be obeyed accordingly. Plo. 393.

If there be *Variance* between the *Certiorari* and the Record removed, the Justices need not to certify such Record. *Lamb. 500.* Fitz. 245. b.

A Justice of Peace may deliver or send into the King's Bench an Indictment found before him, or a Recognizance of the Peace taken by him, or a Force recorded by him, without any *Certiorari*: But if he having a Record in his Hands be discharged of his Office, now he cannot certify it without a *Certiorari*, although he be made a Justice of Peace again. See 8 H. 4. f. 5. *Br. Record 64.* In-Cro. 130a & 133. b.

If a *Certiorari* be to send up the Indictment of *A.* in which Indictment some others be indicted with the same *A.* yet need not the Justice of Peace to make any Certificate concerning any but *A.* For although 6 Ed. 4. 5.

though they be named jointly, yet they be indicted severally, and the King may pardon *A.* without forgiving the other. 6 *Ed.* 4. 5.

6H. 7. 16. Br. Jud. 17. If a *Certiorari* shall come to the Justices of the Peace to remove an Indictment, and the Party sueth not to have it removed, but suffereth it to lie still after the Day of the Return of the *Certiorari*; yet the Justices of Peace ought *ex officio* to send it away, because the Writ containeth in it self a Command to them so to do; and so is a *Supersedeas* of it self to the Justices of Peace to stay their Proceedings. See *antea*, tit. *Forcible Entry*.

And yet by others the Justices may proceed upon the Indictment. *Vide Crom.* 132, 133. & 166. *Dyer* 245.

Lamb. 497. F.N. B. 237. c. And albeit the *Certiorari* be a *Supersedeas* of it self, yet may the Party upon the *Certiorari* purchased have a *Supersedeas* also directed to the Sheriff, commanding him that he arrest him not upon that Record before the Justices of Peace. *Fitz. f.* 237. In which Place also he doubteth whether the Justices of Peace themselves ought not of Duty to award their own *Supersedeas* to the same Effect, after that the Writ of *Certiorari* is brought to their Hands.

Lamb. 438. If a *Certiorari* come to the Justices of Peace to remove an Indictment, and in Truth it was not taken till after the Date of that *Certiorari*; yet if the Indictment be removed thereby, it is good enough, for that they be both the King's Courts. (1 *R.* 3. 4.) and in such a Case it is now usual to remove it. *Vide Fitz.* 71. d.

But all Writs of *Certiorari* being to remove any Indictment of Forcible Entry, or Riot, or of Assault and Battery, found before the Justices of Peace, shall now be delivered at some Quarter-Sessions of the Peace in open Court, &c. 21 *Jac.* c. 8. See *hic antea* tit. *Forcible Entry*. And the Persons so prosecuting the same shall (before the Allowance thereof) become bound unto the Prosecutor in 10 l. Bond with Sureties, as the Justices shall think fit, with Condition to pay to the Prosecutor (within one Month after Conviction) such reasonable Costs and Damages, as the Justices of the Peace of the County (where the Bill shall be found) shall assess and allow; and in Default thereof the Justices may proceed.

Lamb. 501. All the higher Courts at *Westminster* may write to the Justices of Peace, to certify their Records for the Trial of Causes depending before them, as you may read 19 *H.* 6. 19. where they of the Common Pleas did send to the Justices of Peace for an Indictment, because in a Writ of Conspiracy (brought or depending before them) it was material to have it.

In some Cases the Justice of Peace may certify a Record (by him made or found before him out of Sessions) without any Writ of *Certiorari* therefore to him directed. *Vide antea*, tit. *Forcible Entry*.

In other Cases he must of Duty certify his Proceedings, but may spare to certify the Record, until a *Certiorari* come to him for it. See hereof *antea*, tit. *Surety for the Peace*.

For the Manner of the Writ of *Certiorari* to remove Records from one Court to another, or from the Justices of Peace, or other Officers of Record, to any the higher Courts at *Westminster*, &c. there are divers Forms and Sorts thereof, as you may see in *F. N. B.* 242. &c.

I will only set you down here one Form for all, and so conclude.

The Form of *Certiorari* out of the Chancery to certify a Recognisance taken by a Justice of Peace in the County for the Keeping of the Peace, &c.

GEORGIUS, *Dei gratia*, Angliæ, Scotiæ, Franciæ & Hiberniæ F. N. B. Rex, *Fidei Defensor*, &c. *Custodibus Pacis nostri in Com' Can-* 18. c. tab. & eorum cuilibet salut'. *Volentes certis de causis Certiorari super* 148. *tenor' cujusdam Securitatis Pacis, quam A. P. Armiger nuper invenit coram vobis, vel aliquo vestrum, de eo quod ipse dampnum vel malum aliquod R. S. aut alio alicui de populo nostro, de corpore suo nec faceret, nec fieri procuraret quovis modo; vobis mandamus quod tenorem in Securitatis Pacis predict' nobis in Cancellar' nostr' in Octabis Purificat' Beatæ Mariæ prox' futur', ubicunq; tunc fuer', sub sigill' vestr' vel unius vestr' distincte & aperte sine dilatione mittatis: Et hoc sub pena cent' libr' nullatenus omittatis, nec aliquis vestr' omittat. Teste meipso apud West. 28 die Nov. anno Regni nostri sexto.*

Vel Boni gestus, as the Case is.

The Return hereof see *antea*, tit. *Surety for the Peace*.

But if the *Certiorari* be with these Words, We command that you send all and singular the Recognisances aforesaid, with all Matters concerning the same, as fully and wholly as before you, &c. they were late taken, &c. Here the Justice of Peace, together with the Recognisance, must certify and send his Examinations taken, or the Warrant whereby the Party was brought before him to find such Surety, and such other Matter or Cause as he knoweth why such Surety was required against the Party; that so the Court above may proceed against the Party (if Cause be required) according to Law and Justice. And the Certificate may be thus:

I M. D. one of the Justices of the Peace in the County of Cambridge do certify his Majesty in his Court of Chancery (or King's Bench) That I by Virtue of a certain Warrant (the Tenor of which is here under written) did compel R. C. in the same Writ named, to find Surety according to the Form of the said Warrant. And I the said M. D. by Virtue of the said Writ, the said Recognisance in the said Writ mentioned, and all Things touching the same, to his Majesty (under my Seal) do hereby distinctly send, as in the said Writ is of me required. In Witness whereof, &c.

The Tenor of the above-mentioned Warrant followeth. Then underneath write the Warrant, &c. *verbatim*.

Note, Quod Record ne ferra remove mes per Certiorari, ou Corpus cum causa. Fitz. Record. 3.

Rit.

Note also, that upon a *Certiorari* to remove an Indictment of a Riot or Forcible Entry, &c. the Return must have these Words, *Nec non ad diversas Felonias*, &c. For if the Return mentions only that they are Justices of the Peace, without the former Words, *Nec non ad diversas Felonias, Transgressiones, & alia malefacta*, &c. according to the Commission, the Return is insufficient. 12 H. 7. 25. 2 R. 3. 9. *Br. Indictment* 32, 50.

Also note, that no *Certiorari* shall be granted to remove any Recognisance, except the same Writ be signified with the proper Hand of

of the Chief Justice, or (in his Absence) of one of the Justices of that Court out of which the said Writ shall be awarded or made. 1 & 2 P. & M. c. 14.

21 Jac.
cap. 8.

Certioraries shall be delivered in open Sessions, and before they are allowed, the Parties indicted shall become bound to the Prosecutor in 10*l.* with such Sureties as the Sessions shall think fit, with Condition to pay within one Month after Conviction, such Costs and Damages as the Sessions shall allow; and in Default of such Payment the Sessions may proceed.

In what Cases Certiorari's shall not be granted, and upon what Conditions.

12 Car. 2.
cap. 23.

Two or more Justices residing near the Place where Offences and Forfeitures relating to the Duties of Excise, shall be done or made, are appointed to judge and determine the same, and no *Certiorari* shall be allowed to supersede the Execution of any of their Orders or Proceedings.

13 & 14
Car. 2.
cap. 6.

By this Statute the Justices of Peace have Power to hear and determine Offences relating to the Highways, and no *Certiorari* shall be allowed to remove their Proceedings, unless the Person indicted shall before such Allowance be bound to the Prosecutor in 40*l.* with Sureties conditioned to pay him, within one Month after Conviction, full Costs and Damages to be ascertained on Oath of the Prosecutor, and in Default thereof the Sessions may proceed.

Highways.

3 & 4 W. 3.
cap. 10.

No *Certiorari* shall be allowed to remove any Proceedings concerning Deer-stealing, unless the Person prosecuted become bound to the Prosecutor in 50*l.* with such Sureties as the Justice before whom convicted shall think fit, with a Condition to pay the Prosecutor his full Costs and Damages, if the Conviction is affirmed, or a *Procedendo* allowed; and in Default thereof the Justice may proceed to Execution.

Deer-stealing.

3 & 4 W. 3.
cap. 12.

All Matters concerning Highways, Causeys, Pavements and Bridges, mentioned in this Act, shall be heard and determined in the proper County, and not elsewhere; and no Proceedings made by Virtue thereof shall be removed by *Certiorari* out of the proper County into any other Court.

4 & 5 W. 3.
cap. 23.

No *Certiorari* shall be allowed to remove Convictions or Proceedings of Justices concerning the Game, by Virtue of this Act, unless the Party desiring it shall, before such Allowance, become bound to the Prosecutor in 50*l.* with Sureties to be approved by the Justices, to pay the full Costs and Damages, on Oath of the Prosecutor, within a Month after Conviction, or a *Procedendo* granted; and in Default thereof the Justice may proceed, &c.

The Game.

5 & 6 W. 3.
cap. 11.

Certiorari shall not be granted in Term-time at the Instance of any Person indicted or presented for a Trespass or Misdemeanour before a Trial is had at the Sessions, unless upon Motion in Court of B. R. and a Rule made for that Purpose, and afterwards, and before it shall be allowed, the Party must enter into a Recognisance of 20*l.* with two sufficient Sureties, before a Justice of the County, conditioned to appear at the Return of the Writ and plead to such Indictment or Presentment, and procure Issue to be joined at his own Costs, and to be tried at the next Assises for the County, after the Return of the Writ; and if in London or Middlesex, then to be tried the next Term after the Writ granted, &c. and to give due Notice of such Trial.

Term-time.

This Act was made perpetual by 8 & 9 Will. 3. cap. 33. See postea.

And this Recognisance must be certified into B. R. together with the *Certiorari* and Indictment, there to be filed, and the Name of the Prosecutor,

Prosecutor, &c. indorsed on the Indictment; and if the Defendant shall not enter into such Recognisance, the Justices may proceed to Trial.

And if he who procures the *Certiorari* is convicted, *B. R.* must give reasonable Costs to the Prosecutor, and to be taxed according to the Course of that Court; and if the Party doth not pay it within ten Days after Demand, then Oath being made of his Refusal to pay, &c. an Attachment shall be granted against him, and the Recognisance shall not be discharged till the full Costs are paid.

*Vacation-
Time.*

** If 'tis
Tops of*

*the proce-
dent Term,*

Any of the Judges of *B. R.* may grant a *Certiorari* in * Vacation, but then his Name, and also the Name of the Party at whose Instance it was granted, must be endorsed on the Writ, and the like Recognisance entered into before 'tis allowed.

*the Fiat for it must be signed by some Judge before the Effoin-day of the subsequent Term; otherwise a Proce-
dendo will be granted; but he need not sign the Certiorari it self, unless 'tis required by Statute.*

*Counties
Palatine.*

And on every *Certiorari* granted in Counties Palatine, the same Rules shall be observed.

*High-
ways, &c.
Bridges.*

But where the Right of repairing Highways or Bridges, &c. is in Question, in such Case, upon an *Affidavit* made of the Truth thereof, a *Certiorari* may be granted, the Party procuring it entring into such Recognisance with Sureties, as aforesaid.

The aforesaid Statute 5 & 6 *Willi.* which was only temporary, was 8 & 9 *W. 3.* made perpetual; and it was farther enacted, that the Party at whose Instance a *Certiorari* shall be granted to remove any Proceedings from the Sessions, may enter into a Recognisance with two sufficient Sureties, before a Judge, with the same Condition as in the aforesaid Statute, which shall be mentioned on the Back of the Writ, under the Hand of the Judge who took it; and this shall be as effectual to supersede any farther Proceedings below, for the Removal whereof a *Certiorari* shall be granted, as if the Recognisance had been taken by a Justice of the Peace of the County, according to the said Act; only if 'tis taken before a Judge, it must be added to the Condition of the Recognisance, that the Party prosecuting the *Certiorari* shall appear from Day to Day in the Court of *B. R.* and not to depart without Leave of the Court.

Tithes.

Two Justices have Power to hear and determine Differences concerning small Tithes under the Value of 40 *s.* an Appeal lies to the next Quarter-Sessions, but no *Certiorari* must be granted to remove any Proceedings by Virtue of that Act, unless the Title of the Tithes come in Question.

Game.

No *Certiorari* must be allowed to remove any Proceeding of the Justices against Persons destroying the Game, unless the Party accused shall, before the Allowance thereof, become bound to the Prosecutor in 50 *l.* with such Sureties as the Justice shall think fit, conditioned to pay him, within four Days after Conviction or a *Procedendo* granted, full Costs and Charges on Oath; and in Default of such Security the Justice may proceed as if no *Certiorari* had been.

*'Tis a Su-
persedeas
as soon as
'tis deli-
vered.*

A *Certiorari* being delivered is a *Supersedeas* to all subsequent Proceedings on the Record; but then it must be delivered before the Jury who are to try the Cause are sworn, for if afterwards, they may proceed.

*Falso Re-
turn.*

And the Person to whom 'tis delivered may make what Return he thinks proper; which, if false, yet the Court will not stay the Filing

it, on *Affidavits* made that 'tis false, except in publick Cafes, as in Cafes of Commissioners of Sewers, or for not repairing Highways, or for some such special Causes, because the Remedy for a False Return is either an Action on the Case at the Suit of the Party grieved, or an Information at the Suit of the King.

It hath been doubted whether a *Certiorari* would lie to remove ^{Cinque Ports, Counties} Indictments found in the Cinque Ports, Counties Palatine and ^{Palatine} Wales. ^{and Wales} But 'tis now settled, and it hath been awarded to the Mayor and Justices of *Dover*, and not to the Lord Warden to remove an Indictment for Felony found there.

^{Cro. Car. 152, 264} Mich. 8 So it was granted to remove the like Indictment out of the Court Will. 3. at *Romney*, upon a Suggestion, that the Defendant could not have an ^{Rex v. Bird} indifferent Trial before the Steward there, tho' it was insisted against the *Certiorari*, that they had a very antient Charter to exempt them from the Jurisdiction of the Court of King's Bench, and of Justices of Assise.

^{March Rep. 165} It hath been granted to remove Indictments out of Counties Pala-^{Counties} tine; for tho' they have Grants of *Jura Regalia*, yet the King never ^{Palatine} intended to exclude himself, and all Indictments are at his Suit.

It hath been granted to remove an Indictment of Murder found in ^{Wales} a *Welsh* County, for tho' by the Statute 34 H. 8. the Justices in *Wales* ^{34 H. 8. cap. 26} have Power to hold Pleas of the Crown, as the Chief Justice of *Eng-* ^{26 H. 8. cap. 6} land may do, yet that is not a Repeal of the Statute 26 H. 8. which allows Indictments for Felony found in *Wales*, to be tried in the adjoining *English* Counties; besides, *B. R.* is not excluded by any negative Words in the Statute 34 H. 8.

But lastly, Where ever a Statute gives an *Appeal* from the Order of the Justices to the next Sessions, in such Case the Granting a *Certiorari* before the Matter upon the Appeal is determined, is altogether irregular; therefore if an Order should be removed, then before 'tis filed, the Party may, upon Motion, object against the *Certiorari*; and then the Order thus removed will be sent down again, but not after the Time of *Appeal* is expired, for then it will be too late to object against the *Certiorari* thus granted.



N. B. The Reader is desired to take Notice, that at the Head of some of the Chapters, the Word *Vide* is inserted by Mistake, and has no Reference to other Chapters.

An A P-

A N

APPENDIX,

BEING A

Compleat Summary of all the Acts of Parliament, shewing the various Penalties of Offences by *Statute*, and the particular Power of *One, Two, Three*, or more Justices, in their Proceedings and Determinations, under several distinct HEADS.

A TABLE of the GENERAL HEADS.

A.

A Bjuration, *see* Oaths.
Agnus Dei, *see* Papists.
 Alamodes and Lustrings.
 Ale and Beer (Retailers of), *see* Excise.
 Alehouses.
 Alms-houses, *see* Rates in Title Poor.
 Annuitant and Annuity.
 Apprentice.
 Arms.
 Arms of Soldiers and Deserters, *see* Officers and Soldiers.
 Arms and Horses of Papists, *see* Papists and Popish Superstition.
 Army Debentures.
 Arrack, *see* Brandy in Excise.
 Artificers, *see* Leather.

B.

B Adgers, *see* Salt.
 Badging the Poor, *see* Poor.
 Bail.
 Bailiffs, *see* Constables and Surveyors in Title Highways, and Wages of Knights of the Shire.
 Bakers and Bread.
 Bankrupts.
 Banks or other Inclosures, *see* Wood.
 Bark, *see* Forefallers, and Ingrossers, and Wood.
 Bastards.
 Bedford Level.
 Beer and Ale.
 Beer and Ale (Retailers of), *see* Excise.
 Beggar, *see* Vagabonds and Vagrants.
 Billets, *see* Fuel.
 Blasphemous Words.
 Boats, *see* Keels.
 Bone-Lace, *see* Hawkers and Pedlars.
 Books.
 Boots, *see* Shoemakers and Tanners.

Bows, *see* Game.
 Boys bound to Sea, *see* Apprentices.
 Brandy.
 Brass.
 Brewers, *see* Excise.
 Bricklayers and Tile-makers.
 Bridle-Cutters, *see* Tanner.
 Bridges, *see* Highways.
 Buggery.
 Bullion.
 Burials.
 Burglars, *see* Watchman.
 Burglary, *see* Stolen Goods.
 Butcher, *see* Conspiracies and Tanners.
 Butter and Cheese.
 Buttons and Button-holes.

C.

C Ards and Dice, *see* Titles Stamp-Duty, and Games not lawful.
 Calicoes.
 Carriers and Carriages.
 Carriages for Soldiers in their March, *see* Officers and Soldiers.
 Cattle.
 Cheese, *see* Butter and Cheese.
 Certiorari.
 Church.
 Church-wardens, *see* Poor.
 Clerk of the Market, *see* Bakers, Bread, and Weights and Measures.
 Clothes.
 Clothes, Caps, or other Furniture of Soldiers and Deserters, *see* Officers and Soldiers.
 Cloth and Clothier.
 ——— Woollen.
 ——— Linen.
 Clothiers and Cloth-workers Servants, *see* Servants.
 Coaches and Chairs, and Coach-horses, *see* Hackney-Coaches and Chairs.
 S f f f Coals,

A Table of the General Heads.

Coals.
Coin and Coining, *see* Bullion.
Collar-makers, *see* Tanners.
Collectors for Prisons, *see* Vagabonds and Vagrants.
Commission of the Peace, *see* Justices of the Peace.
Conies, and Cony-Dogs, *see* Game, and Officers and Soldiers.
Conformity.
Conspiracies.
Constables.
Conventicles.
Convicts.
Coopers.
Copplices, *see* Wood.
Corn, *see* Badger, and Weights and Measures.
Coroner, *see* Sheriff, and Wages of Knights of the Shire.
Costs upon Appeals from Orders of Settlement.
Cottages.
County-Courts.
Counterfeit Letters, *see* False Tokens.
Currier.
Curriers Company, *see* Shoemakers.
Curling, *see* Swearing and Curling.
Custom-house Officers.
Cyder-makers, and Retailers of Cyder, *see* Excise.

D.

D EER.
Deer-stealers.
Deserters, *see* Soldiers and Mariners, and Officers and Soldiers.
Dissenters.
Dissenting Teachers, *see* Oath of Allegiance in Papists, &c.
Distillers, *see* Brandy in Excise.
Dogs, *see* Game.
Drunkenness.
Duty on Houses, *see* Windows.

E.

E Streets, *see* Sheriffs.
Examination.
Excise.
Brandy.
Brewers.
Cyder-makers.
Distillers.
Gangers.
Makers of Mead, Vinegar, Metheglin and Sweets.
Inn-keepers and Victuallers.
Low-wines.
Malt.
Retailers of Beer, Ale, Cyder, Perry, and Metheglin.

F.

F Airs.
False Musters.
False Tokens.
Fathers and Mothers, to maintain poor Children, *see* Poor.
Fellers of Oak-Trees.
Felons, *see* Transportation.
Felony.
Fences, *see* Orchards and Wood.

Fencers, *see* Vagabonds and Vagrants.
Fines.
Fire.
Fireworks, *see* Squibs.
Fish, *see* Officers and Soldiers.
Fish-ponds, *see* Title Fish.
Flesh.
Forceful Entry and Detainer.
Forefallers and Ingrossers.
Fortune-tellers, *see* Vagabonds and Vagrants.
Fowls, *see* Officers and Soldiers.
Fruit-Trees, *see* Orchards.
Fuel.
Fullers Earth and Fullers Clay, *see* Brandy in Excise.

G.

G Ames not lawful.
Game.
Conies.
Deer, Hare, Partridge, and Pheasant.
Deer-Hayes, or Buckstalls.
Eggs of Falcon, Goshawk, Lanner, or Swan.
Game-keeper.
Greyhounds, Bows, Setting-Dogs, Ferrets, and Snares.
Guns.
Hawks.
Heron.
Pigeon, *see* Deer.
Wild Duck, Teal, Widgeon, and Water-Fowl.
See Officers and Soldiers.

Gaol.
Gaolers, *see* Sheriff.
Gilding and Goldsmiths.
Grandfathers and Grandmothers, to maintain poor Grandchildren, *see* Poor.
Guns, *see* Guns in Title Game.
Gun-powder.
Gyplies, or Egyptians, *see* Vagabonds and Vagrants.

H.

H Ackney-Coaches and Chairs.
Hare, *see* Game.
Harvest-Workmen.
Hawkers and Pedlars.
Hawks, Hawkets, and Hawking, *see* Game.
Hay.
Hay and Oates.
Hay and Straw.
Hay-Market.
Headboroughs, *see* Jurors.
Heath, Furze and Fern.
Hedges and Hedge-wood, *see* Highways, Orchards, and Wood.
Hemp and Flax.
Hides, *see* Butcher.
High Constables, *see* Constables and Surveyors in Titles Highways, Jurors, and Vagabonds and Vagrants.
Highway-men.
Hops.
Horses, *see* Fairs.
Hospitals, *see* Rates in Title Poor.
House-breakers, *see* Watchman.
House of Correction.

I. Jc-

A Table of the General Heads.

L

Jesuit and Priest, *see* Papists, &c.
 Informers.
 Ingrossers, *see* Forefallers and Ingrossers.
 Inn-keepers, *see* Alehouse-keepers, and Excise.
 Journeymen Taylors.
 Jurors, *see* Sheriffs.
 Justices of Peace.

K

Keels.
 King's Game, *see* Officers and Soldiers.
 Knights of the Shire, *see* Wages.

L

Labourers, *see* Servants and Wages.
 Lamps, *see* Lights.
 Land-Carriage of Goods, *see* Waggon and Waggoner.
 Leather.
 Lights.
 Linen Manufactures, *see* Cloth and Clothier, and Wages.
 Lotteries.
 Low Wines, *see* Distillers in Title Excise.
 Lunaticks.

M

MALT.
 Manufactures.
 Markets, *see* Fairs.
 Master and Mistress, *see* Servants and Apprentices.
 Mats.
 Measures, *see* Weights and Measures.
 Misdemeanors, *see* Informers.
 Money.
 Murder.
 Muster-Master, *see* Officers and Soldiers.

N

NETS, *see* Fish and Game.
 News-Papers, *see* Stamp-Duty.
 Nonconformity.
 Norwich Stuffs.
 Nuisances in or upon the Highways, *see* Constables and Surveyors in Title Highways.

O

OATH.
 Oath of Allegiance, *see* Papists, &c. and Title Recusancy.
 Oats, *see* Hay and Oats.
 Officers and Corporations, *see* Oath.
 Officers and Soldiers.
 Orchards.
 Overseers of the Poor, *see* Poor.
 Overseers of Cloth, *see* Cloth.

P

Pales, *see* Orchards and Wood.
 Pamphlets, *see* Stamp-Duty.
 Panels of Juries.
 Paper, *see* Stamp-Duty, and Vellum and Parchment.

Papists and Popish Superstition.

Agnus Dei, Crosses, Beads, and Pictures.
 Arms and Horfes.
 Books and Relicks.
 Crucifix.
 Feme Coverts.
 Jesuit and Priest.
 Impugning Supremacy.
 Licence.
 Maintaining the Pope's Jurisdiction.
 Mass.
 Oath of Allegiance.
 Reconciler and reconciled, *see* Oath of Allegiance *supra*.
 Recusancy.
 Reputed Papists.

Parliament.
 Partition of Lands.
 Partridge, *see* Game.
 Party-Walls, *see* Fire.
 Paste-board, *see* Vellum and Parchment.
 Paving the Streets, and Pavements, *see* Constables and Surveyors, in Highways, and Scavengers.
 Perjury, *see* Quakers.
 Perry (Retailers of), *see* Excise.
 Petty Chapmen, *see* Hawkers and Pedlars.
 Petty Constables, *see* Jurors, and Vagabonds and Vagrants.
 Pheasants, *see* Game, and Officers and Soldiers.
 Physicians.
 Pigeons, *see* Game, and Officers and Soldiers.
 Pilchards.
 Plague.
 Players, *see* Vagabonds.

Poor.

Badge.
 Boys bound to Sea, *see* Apprentices.
 Coats.
 Father, &c. to maintain Poor Children.
 Overseers.
 Rates.
 Refusing to work.
 Registering Notice.
 Setting the Poor to Work.
 Settlement and Removal.
 Popish Books and Relicks, and Pictures, *see* Papists, &c.
 Post and Postmaster.
 Posts, *see* Wood.
 Preachers.
 Prison, *see* Gaol.
 Prisoners, *see* Rates or Tax, in Title Poor.
 Prison-Collectors, *see* Vagabonds and Vagrants.
 Process.
 Proclamation against Rioters, *see* Riots and Rioters.
 Prophecies.
 Purveyors.

Q

Quakers.
 Quarentine.
 Quartering Soldiers, *see* Officers and Soldiers.
 Quarter-Sessions of the Peace, *see* Justices.
 Quicksets, *see* Wood.

R. Ra-

A Table of the General Heads.

R.

Rakers, *see* Scavenger.
 Recognizances, *see* Justices of the Peace.
 Recusancy.
 Riots and Rioters.
 Rivers.
 Robberies.
 Robbing Orchards, *see* Orchards.
 Rockets, *see* Squibs.
 Rogues, *see* Vagabonds and Vagrants.
 Rum, *see* Brandy, in Excise.
 Runaways.
 Runners of foreign Goods. *see* Smuglers, &c.

S.

Sacrament.
 Sadlers Company, *see* Shoemakers.
 Salt, *see* Weights and Measures.
 Scavenger.
 Seamen, *see* Boys bound to Sea, in Apprentices.
 Searchers and Sealers of Leather, *see* Leather.
 Servants.
 Sessions of the Peace, *see* Justices of the Peace.
 Setting-Dogs, *see* Game.
 Sewers.
 Sheep, *see* Cattle.
 Sheep-Skins, *see* Tanner.
 Sheermen, *see* Cloth and Clothier.
 Sheriff and Sheriff's Clerks, *see* County-Courts, and Wages of Knights of the Shire.
 Ships in Distress.
 Shoes, *see* Tanners.
 Shoemakers and Shoemakers Company, *see* Cloth and Clothier.
 Silk and Silk-winders.
 Silk-throwers.
 Smuglers or Runners of foreign Goods.
 Snares, *see* Game and Fish.
 Soldiers and Mariners.
 South-Sea Company, *see* Felony.
 Spirits, *see* Brandy, in Title Excise.
 Squibs.
 Stamp-Duty.
 Stewards of Franchises, *see* Sheriff.
 Stolen Goods.
 Strong-Waters, *see* Brandy, in Title Excise.
 Strong-Waters (Retailers of), *see* Excise.
 Sub-Commissioners of the Excise, *see* Weights and Measures.
 Subornation of Perjury.
 Sunday.
 Surveyors of Highways, *see* Highways.
 Swans Eggs, *see* Game.
 Swearing and Curfing.
 Sweets, *see* Excise.
 Swine, *see* Cattle, and the Stat. 2 W. & M. c. 8. Sect. 2. Sect. 22.

T.

Tanner.
 Tavern, *see* Alehouses.

Tawers, *see* Tanners.
 Taylors, *see* Journeymen Taylors, Buttons and Button-holes, and Cloth and Clothier.
 Timber-Trees, *see* Wood.
 Tiplers, *see* Alehouses.
 Tobacco.
 Tobacco-pipe Clay, *see* Brandy in Title Excise.
 Toll, *see* Hay-market.
 Toll-Takers, *see* Fairs.
 Transportation.
 Travelling on the Lord's Day by Water, *see* Sunday.
 Treasurer of the County.
 Trees, *see* Wood.
 Trespassers, *see* Informers.
 Trophy-Money.
 Tythes.

V.

Vagabonds and Vagrants.
 Vellum and Parchment.
 Victuallers, *see* Alehouses, and Brewers, Innkeepers, and Victuallers, in Title Excise.
 Vinegar-makers, *see* Excise.
 Vintners, *see* Alehouses.
 Under-Sheriffs.
 Under-woods, *see* Orchards and Wood.
 Unlawful Games or Plays, *see* Vagabonds and Vagrants.

W.

Wages.
 Wages of Knights of the Shire.
 Wages of Burgeses.
 Walnut-tree Leaves, *see* Tobacco.
 Warren, *see* Game.
 Watches, *see* Commission of the Peace.
 Watchman.
 Water-courses, *see* Highways.
 Water-Fowl, *see* Game.
 Water-Measure, *see* Weights and Measures.
 Ways, *see* Highways.
 Weavers, *see* Cloth and Clothier.
 Weavers of Norwich Stuffs, *see* Norwich Stuffs.
 Weights and Measures.
 White Herrings, *see* Salt.
 Widening or enlarging Highways, *see* Sessions, in Title Highways.
 Wild-Fowl, *see* Game.
 Windows.
 Wood.
 Wool, *see* Brandy in Title Excise.
 Woollen Manufactures, *see* Cloth and Clothier, and Wages.
 Words spoken against the Queen's Title.
 Work, *see* Poor, and Vagabonds.
 Workmen, *see* Harvest-Workmen.
 Wrecks.
 Wrought Plate.

Y.

Yarn, *see* Brandy, in Title Excise, and Wool.

N. B. Wherever the Words **One, Two, Three**, appear in the black Letter, it signifies that the Business is to be performed by One Justice, Two Justices, &c.



APPENDIX.

Offences. Alamodes and Lustrings. Penalties.

[One] **T**O grant a Warrant to search for, and seize, prohibited Alamodes and Lustrings, upon Oath of one or more credible Person or Persons, that they have Reason to suspect, or believe, that there are some of the said Silks fraudulently imported.

Stat. 9 & 10 W. 3. c. 43. Sect. 5.

Offences. Alehouses. Penalties.

[One] **A** Lehouse-keepers, Inn-keepers, Vintners, or Victuallers, suffering any of the same Parish to sit tippling in their Houses.

Stat. 1 Jac. 1. c. 9. Sect. 2.

21 Jac. 1. c. 7. Sect. 2.

1 Car. 1. c. 4. Sect. 1.

One Witness, View or Confession; and after Confession his Oath may convict others.

Alehouse-keepers, Inn-keepers or Victuallers, selling less than one Quart for a Penny.

Stat. 1 Jac. 1. c. 9. Sect. 3.

21 Jac. 1. c. 7. Sect. 1.

Conviction, *ut supra*.

Alehouse-keeper, Inn-keeper, Vintner or Victualler, suffering any Person whatsoever to sit tippling in his House.

Stat. 1 Jac. 1. c. 9. Sect. 2.

21 Jac. 1. c. 7. Sect. 2.

1 Car. 1. c. 4. Sect. 1.

View, or Two Witnesses.

Parishioners, or others, who sit tippling in any Alehouse, Inn, Tavern, or Victualling-house.

Stat. 4 Jac. 1. c. 5. Sect. 5.

21 Jac. 1. c. 7. Sect. 2.

View, or one Witness.

Ten Shillings to be levied by Distress and Sale after Six Days, and for Want of Distress, to be committed until Payment.

Disabled for Three Years to keep any Alehouse.

If the Constables or Church-wardens do not levy the Penalty, or shall not certify the Want of Distress within Twenty Days, he forfeits 40 s. to be levied, *ut supra*, for the Poor.

Twenty Shillings, to be levied *ut supra*, and so employed.

And disabled, *ut supra*.

Constable, &c. punished *ut supra*.

Suspended during the Continuance of the additional Excise.

Stat. 1 W. & M. c. 24. Sect. 8.

Ten Shillings to be levied, employed, and disabled, *ut supra*.

Three Shillings and four Pence, to be levied and employed, *ut supra*, to be paid in a Week; if not able, to sit in the Stocks four Hours.

Alehouse-keepers, &c. disabled Three Years.

Constables, &c. neglect, 10 s. to be levied, *ut supra*, and so employed.

Ale-

T t t t

Dis-

A P P E N D I X.

Offences.

Alehouses.

Penalties.

Alehouse-keeper, convicted of Drunkenness.

Stat. 21 Jac. 1. c. 7. Sect. 4.

Conviction, *ut supra*.

Prosecution to be in Six Months.

Disabled to keep an Alehouse for Three Years. Besides the Forfeiture of 5 s. &c. and Penalties inflicted on others.

Keeping an Alehouse without Licence.

Stat. 3 Car. 1. c. 3. Sect. 2.

View, Confession, or Two Witnesses.

The Offender punish'd by this Act, not to be punished by 5 & 6 Ed. 6. c. 25.

Twenty Shillings to the Poor, to be levied *ut supra*, and for Want of Distress, to be whipp'd, for the first Offence.

For the Second, to be committed to the House of Correction for a Month.

For the Third, not to be enlarged there, but by Order of Sessions.

The Officer neglecting his Duty, to be imprisoned without Bail, or pay 40 s. for the Poor.

N. B. Sub-Commissioners, or Collectors of Excise are to provide a substantial Ale-Quart and Pint Winchester-Measure, in their Divisions, on Pain of 5 l.

Mayors of Towns, &c. refusing to stamp Ale-Quarts and Pints, are liable to the Penalty of 5 l. by the Stat. 11 & 12 W. 3. c. 15.

Persons selling Ale and Beer in any Vessel not sign'd and marked with W. R. and a Crown, according to the Standard in the Exchequer, or City of London, and not full Measure.

Stat. 11 & 12 W. 3. c. 15. Sect. 1.

And Persons selling Brandy or other distill'd Liquors, without Licence.

Stat. 12 & 13 W. 3.

One Witness.

Not above Forty Shillings, nor under Ten, to be levied by Distress and Sale.

One Moiety to the Poor, the other to the Prosecutor.

[Two] To license Alehouses, and take Recognizances, with two Sureties, for good Order into the same; for which take 12 s. and no more.

Stat. 5 & 6 Ed. 6. c. 25. Sect. 1.

Quorum 1.

To certify such Recognizances the next Quarter-Sessions.

To assemble once in a Year, either in April or May, and call before them such Persons as sell Ale, and inform themselves who are fit to keep Alehouses, and then proceed to licence them. Stat. 16 Jac. 1.

All Mayors, Town-Clerks, and other Persons whom it may concern, shall make, or cause to be made out Ale-Licences duly stamp'd before new Recognizances are taken.

Stat. 6 Geo. c. 21. Sect. 54.

Ten Pounds for every Offence.

To remove, discharge, and put away any Alehouse, as they shall think fit and convenient. Stat. 5 & 6 Ed. 6. c. 25. Sect. 1. Quorum 1.

Persons keeping Alehouses, or selling Beer and Ale without Licence.

Stat. 5 & 6 Ed. 6. c. 25. Sect. 4.

Quorum 1.

This extends not to Fairs.

To be committed for Three Days without Bail, and to enter into a Recognizance, with Two Sureties, before they be discharged, not to offend again.

This to be certified to the Quarter-Sessions, which is sufficient Conviction to fine him 20 s.

Six

[Du.]

A P P E N D I X

Offences.

Alehouses.

Penalties.

[Du. Seff.] Persons selling Ale or Beer to an unlicensed Alehouse-keeper, save only for the Expence of his Household.

Stat. 4 Jac. 1. c. 4. Sect. 1.

Six Shillings and eight Pence a Barrel.
One Moiety to the Prosecutor, the other to the Poor.

The Officer who levies the Poor's Moiety, and does not deliver it to the Church-wardens and Overseers, and they not distributing it among the Poor. Stat. 4 Jac. 1. c. 4. Sect. 5.

Double the Value of the Moiety.

See Title Excise.

After the 24th of June, 1726. no Inn-keeper or Victualler in London or Westminster, and the Weekly Bills of Mortality, shall sell any Beer or Ale by Retail, to be consumed out of their Houses, in any Pot, Cup, or other drinking Vessel belonging to such Retailer, which shall contain less than one Gallon in Ale-Measure, on Forfeiture of 40 s.

But Beer or Ale may be drunk at the Door, or in any Outhouse, Shed, Arbour, Garden, or Yard belonging to such House.

If any Inn-keeper or Victualler shall not take out a Permission, or not pay his Composition, he shall forfeit 20 l. 12 Geo. c.

Offences.

Annuitant, &c.

Penalties.

[One] TO take an Oath, that the Nominee of the Annuitant was alive on the Day the Payment became due. Stat. 2 Ann. c. 3. Sect. 23.

To take an Affidavit of the due Execution of an Assignment, or a Will made of an Annuity pursuant to Stat. 4 Ann. c. 6. Sect. 28. 5 Ann. c. 19. Sect. 22. 6 Ann. c. 5. Sect. 19.

Offences.

Apprentice.

Penalties.

[One] Persons fit to make Apprentices, refusing to serve upon Demand. Stat. 5 Eliz. c. 4. Sect. 35.

To be committed till they shall be willing to serve.

To reconcile Differences between Masters and Apprentices: And if he cannot. Stat. 5 Eliz. c. 4. Sect. 35.

To bind over the Master to the Quarter-Sessions.

An Apprentice departing from his Master's Service into another Country. Stat. 5 Eliz. c. 4. 47.

To direct a *Capias* to the Sheriff, or other Chief Officer, for his Apprehension; and being taken, to commit him till he gives good Security, that he will honestly serve out his Time.

To convey poor Parish-Boys bound Apprentices, or turned over to Seamen, to the Port to which their Master belongs, as Vagrants are to be sent by 11 & 12 W. 3. c. 18. Stat. 2 Ann. c. 6. Sect. 10.

[Two] To consent to the Binding Boys Apprentices till Twenty-four, or Girls till Twenty-one, or Marriage. Stat. 43 Eliz. c. 2. Sect. 5. *Quorum* 1.

Persons trusted with Monies to put out Apprentices, to account in *Easter-Week* yearly, before the Two next Justices. Stat. 7 Jac. 1. c. 4. Sect. 6.

Persons refusing to take an Apprentice put out by the Consent of Two Justices, according to 43 Eliz. Stat. 8 & 9 W. 3. c. 30. Sect. 5.

Ten Pounds to be levied by Distress and Sale to the Use of the Poor.

An Appeal lies to the Quarter-Sessions.

To

APPENDIX.

Offences.

Apprentices.

Penalties.

To consent to Church-wardens and Overseers of the Poor, binding and putting out to Sea-Service any Boy of ten Years of Age, who is chargeable, or whose Parents are chargeable to the Parish, or who shall beg for Alms, till he comes to Twenty-one, his Age to be mentioned in the Indenture, and Fifty Shillings to be given with him. Stat. 2 Ann. c. 6. Sect. 1.

Collectors of the Customs not entering the Indentures of Parish-Boys, bound to Sea, in a Book kept for that Purpose. Stat. 2 Ann. c. 6. Sect. 5.

Five Pounds to the Use of the Poor of the Parish whence the Boy was bound, to be levied by Distress and Sale.

To consent to the Turning over Parish-Boys, bound Apprentices, according to 43 Eliz. to Masters and Owners of Ships, by Indenture of Assignment. Stat. 2 Ann. c. 6. Sect. 6.

Every Master or Owner of a Ship of the Burden of Thirty to Fifty Tun, not taking one such poor Boy Apprentice, one more for the next Fifty Tun, one more for every 100 Tun above the first 100. Stat. 2 Ann. c. 6. Sect. 8.

Ten Pounds, for the Use of the Poor of the Parish whence such Boy was bound Apprentice, to be levied by Distress and Sale.

To enquire into, examine, hear, and determine all Complaints of hard or ill Usage, from Masters to Parish-Boys bound Apprentice to Sea. Stat. 2 Ann. c. 6. Sect. 12.

Collectors of Customs not keeping an exact Register, containing the Number, and Burden of all Ships and Vessels, and Masters and Owners Names, and the Names of Apprentices in each Ship, and from what Parishes and Places sent, and not transmitting true Copies thereof to the Quarter-Sessions, as often as they shall be required. Stat. 2 Ann. c. 6. Sect. 13.

Five Pounds to be levied, and disposed, *ut supra*.

[Three] To certify, That Parents have 40s. per Ann. and 3 l. per Ann. Freehold, to qualify their Children to be Apprentices to Merchants. Stat. 5 Eliz. c. 4. Sect. 27.

[Four] To discharge Apprentices, under their Hands and Seals; and if the Master be in Fault, or the Apprentice be in Fault, to inflict such Punishment, as they, in their Discretions, shall think fit. Stat. 5 Eliz. c. 4. Sect. 35. *Quorum* 1.

Note, The Practice now is, for one Justice to bind over the Master, at the Complaint of the Apprentice, to the next Sessions, and then Four Justices to discharge, under their Hands and Seals; and upon Complaint of the Master against the Apprentice, to send the Apprentice to the House of Correction, if he will not agree to appear at the Sessions; and at the Sessions such Order is to be made, under the Hands and Seals of Four Justices, as is just.

[Du. Sess.] Persons taking Apprentices, otherwise than is limited by 5 Eliz. c. 4. except in London and Norwich. Stat. 5 Eliz. c. 4. Sect. 40.

Ten Pounds, and the Indentures void.

Offences.

Arms.

Penalties.

[One] ONE going or riding armed offensively, before the King's Justices, or other his Officers or Ministers, or elsewhere, by Night or Day. Stat. 2 Ed. 3. c. 3. Sect. 3. 7 R. 2. c. 13. Sect. 1. 20 R. 2. c. 1. Sect. 4. View or Complaint.

To be apprehended and bound to the Peace or Good Behaviour, and for Want of Sureties, to be committed, and his Arms to be taken away.

APPENDIX

Offences. Army-Debentures. Penalties.

[One] **T**O alter, or counterfeit any *Army-Debenture*, or knowingly or fraudulently to make out, and issue any *Army-Debentures*, other than by the Commissioners appointed by Stat. 6 Geo. c. 17. Sect. 7.

Felony without Benefit of Clergy.

1. To take an Affidavit of the due Execution of an Assignment of an *Annuity* at 4 per Cent. in Lieu of *Army-Debentures*. 6 Geo. c. 17. Sect. 7.

Offences. Artificers. Penalties.

[One] **M**AY bind over to Assizes, or Sessions, Artificers, about to go beyond Sea, and those who endeavour to withdraw them thither.

For Want of Sureties to be committed to Gaol.

One Witness or Confession. Stat. 5 Geo. c. 27. Sect. 4.

[Du. Sess.] Persons contracting with, enticing, endeavouring to persuade, or solicit any Manufacturer or Artificer in *Wool, Iron, Steel, Brasses*, or any other *Metal, Clock-maker, Watch-maker*, or any other Artificer of *Great Britain*, to go out of his Majesty's Dominions. On Conviction. Stat. 5 Geo. c. 27. Sect. 1.

To be fined not exceeding 100 Pounds for the first Offence, Three Months Imprisonment, and until such Fine be paid.

For the second Offence to be fined at the Discretion of the Court, Twelve Months Imprisonment, and until such Fine be paid.

Prosecution in Twelve Months.

Artificer convicted of any Promise or Contract, or Preparation to go abroad beyond the Seas. Stat. 5 Geo. c. 27. Sect. 4.

To find Sureties not to depart out of his Majesty's Dominions, as the Court shall think fit. And for Want of Sureties to be committed *Quousque*.

Offences. Badgers. Penalties.

[Two] **P**urveyor, Badger, &c. bargaining for any Victual or Grain, in the Markets of *Oxford* or *Cambridge*, or in Five Miles of them. Stat. 2 & 3 P. & M. c. 15. Sect. 2. 13 Eliz. c. 21. Sect. 2.

Quadruple the Value thereof, and Three Months Imprisonment without Bail.

Except when the Queen is there, or within Seven Miles.

[Three] To license a married Man, Householder, and of Thirty Years of Age at least, to be a Badger, Lader, Kidder, Carrier, Buyer or Transporter of Corn, Grain, Butter and Cheese. Stat. 5 Eliz. c. 12. Sect. 1. *Quorum* 1.

[Du. Sess.] Badger, Lader, Kidder, Carrier, Buyer or Transporter of Corn, or Grain, Butter and Cheese without Licence granted in open Sessions of the County, where he hath dwelt Three Years, under the Hands and Seals of (at least) Three Justices. *Quorum* 1. Stat. 5 Eliz. c. 12. Sect. 7.

Five Pounds between the Queen and the Prosecutor.

The Queen's Moiety to be estreated according to the usual Manner, and the Prosecutor's levied, by *Fieri facias*, or *Capias*; but when the Suit is wholly the Queen's, the Whole to be estreated.

Inquisition, or Verdict, or upon Oath of Two Witnesses.

Badger,

U u u u

Five

APPENDIX

Offences.

Badger, &c. buying of Grain out of open Fair or Market (to sell again) unless there be special Words in his Licence to warrant the same. Stat. 5 Eliz. c. 12. Sect. 7.

The Conviction, *ut supra*.

Badgers.

Five Pounds, to be divided, *ut supra*.

Penalties.

At their Discretions, to take Recognizances of Badgers, &c. that they shall not forestall, or engross, or put in Practice any Act contrary to 5 & 6 Ed. 6. c. 14. Stat. 5 Eliz. c. 12. Sect. 6. *Vide Purveyor.*

Offences.

[Two] TO Bail for Manslaughter, or Felony, or Suspicion thereof (beingailable by Law) and being both present at the Time of such Bailment: But they must first take the Examination of the Accused, and the Informations of the Accusers, and Witnesses. London and Middlesex Justices may bail, as before the Statute. Stat. 1 & 2 P. & M. c. 13. Sect. 6. *Quorum 1.*

Bail.

Penalties.

Criminals for Offences under Felony, one Justice may bail; and the Sureties and Sum are left to the Discretion of the Justices, where no certain Sum is appointed by Law; but if the Crime be Felony, they must take sufficient Persons for the Appearance of the Offender, and bind them in a large Sum.

Offences.

[One] BAKERS, and others, making, baking, or exposing to Sale, Bread, not observing the Assize, or under Weight, or not duly marked, or breaking such Regulations and Orders as are made by the Justices from Time to Time. Stat. 8 Ann. c. 18. Sect. 3.

Confession or one Witness.

Prosecution within Three Days. Sect. 5.

Bakers, or Sellers of Bread, putting into any Bread, sold or exposed to Sale, any Mixture of any other Grain, than what shall be appointed by the Assize. Stat. 8 Ann. c. 18. Sect. 7.

Bakers and Bread.

Penalties.

40s. to be levied by Distress and Sale, to be given to the Informer.

The Convictions to be certify'd to the next Quarter-Sessions. Sect. 4.

There lies an Appeal to the next Quarter-Sessions. Sect. 6.

Vide The Table of the Assize of Bread, annex'd to the Statute at large.

20s. to be had, and recovered, *ut supra*.

Mayor, Alderman, Justice, on any Information made to him of any Offence against this Act, wilfully omitting the Performance of his Duty, forfeits 20s. to be recovered by Action of Debt, Bill, Plaint, or Information.

In the Day-time, to enter into any House, Shop, Stall, Bake-house, Ware-house or Out-house of any Baker or Seller of Bread, to search for, view, weigh and try all, or any the Bread there found; and if the Bread be wanting in the Goodness of the Stuff, or deficient in due Baking or Working, or wanting in Weight, or not truly marked, or any other Sort than what is allowed, the same Bread to be seized, and given to the Poor. Stat. 8 Ann. c. 18. Sect. 8.

Any Baker, or others, not permitting or suffering a Search; or opposing, hindring, or resisting the same. Stat. 8 Ann. c. 18. Sect. 8.

The Penalty of 40s. by 8 Ann. c. 18. on Bakers, for Want of Weight of Bread, is reduced

Forty Shillings to be recovered, and given, *ut supra*.

Forfeiture to the Informer, to be adjudged,

APPENDIX

Offences.

Bakers and Bread.

Penalties.

duced to 5 s. per Ounce, for every Ounce wanting in Weight, and 2 s. 6 d. if under. The Bread to be weighed before a Magistrate or Justice in 24 Hours after baked or expos'd to Sale in London and Westminster, and Bills of Mortality, and in 3 Days every where else. Stat. 1 Geo. c. 26. Sect. 5.

ed, levied, and recovered as the 40 s. Penalty is by 8 Ann. c. 18.

Note, By this Statute no Mark seems now necessary; and Bakers may make and sell Peck, Half-peck, Quartern, and Half-quartern Loaves, if in Proportion to the Affize-Table in Weight and Price. Stat. 1 Geo. c. 26. Sect. 6.

And the Clerk of the Market is to certify upon Oath to the chief Magistrate or Justices, the Price of Grain, Meal and Flour, every Time the Affize is altered. Stat. 1 Geo. c. 26. Sect. 7.

Note, The Act 8 Ann. c. 18. was continued by an Act 1 Geo. c. 26. for Three Years, and to the End of the next Sessions, which Act is continued for Five Years, and from thence to the End of the next Sessions. By 5 Geo. c. 25. Sect. 1.

[Two] In Towns and Places where there is no Mayor, Bailiffs, Aldermen or Chief Magistrates, from Time to Time, to set, ascertain, and appoint the Affize and Weight of all Sorts of Bread, having Respect to the Price, Grain, Meal or Flower, bears in the Publick Markets, and to make a reasonable Allowance to the Bakers, for Charges, Pains and Livelihoods: The Affize according to Averdupois, and not Troy-Weight. Stat. 8 Ann. c. 18. Sect. 1.

May license and allow the Bakers to bake and sell such Sorts of Bread, as they shall think fit. Stat. 8 Ann. c. 18. Sect. 1.

To direct and appoint how, and in what Manner, each Sort of Bread shall be marked, for knowing the Baker, or Maker, Price, Weight, and Sort thereof; and to make, and set down any other reasonable Rules and Orders, for the better regulating the Mystery of baking Bread, and the Sorts, Affize, Price and Weight thereof, and all Things concerning the same, as in their Judgments they shall find necessary and convenient. Stat. 8 Ann. c. 18. Sect. 3.

[Qu. Sess.] Upon an Appeal by Bakers, or others, convicted for Making, Baking, or Exposing to Sale, Bread, contrary to Stat. 8 Ann. c. 18. the Sessions to hear, and finally determine the same; and if the Appellant be not relieved, to pay reasonable Costs, and be committed to the Common Gaol, till he pay the Penalty and the Costs. If he be relieved upon his Appeal, the Informer to pay reasonable Costs. Stat. 8 Ann. c. 18. Sect. 6.

Note, The Stat. 8 Ann. c. 18. does not extend to prejudice any Right or Custom of London, or the Practice there used, nor Lords of Leets, nor Clerk of the Market. Sect. 10.

And the Justices in their Charges are to enforce and press the Execution of the said Statute. Sect. 12.

Offences.

Bankrupt.

Penalties.

[One] Upon Application may grant his Warrant for the Taking and Apprehending a Person certified a Bankrupt, and may commit such Person to the Common Gaol of the County where apprehended. Stat. 5 Geo. c. 24. Sect. 4.

A Bankrupt not delivering up to the Commissioners all his Goods, Wares, Books, &c. (and being thereof convicted by Indictment or Information) is guilty of Felony, without the Benefit of Clergy. *Ibid.* Sect. 1 and 3.

Bastards.

APPENDIX

Offences.

Bastards.

Penalties.

[One] ONE who is suspected, or charged to be the Father of a Bastard-Child, which is likely to become chargeable to the Parish.

The Woman to be examined, and her Examination put in Writing.

Such Person as shall have any Hand by Persuasion, Procurement, or otherwise, in conveying or sending away a putative Father.

[Two] After a Bastard-Child is born, which is, or is likely to become chargeable to the Parish. Stat. 18 Eliz. c. 3. Sect. 2. 7 Jac. I. c. 4. Sect. 7.

Two next Justices. Quorum 1.

Lewd Women having Bastard-Children which may be chargeable to the Parish. Stat. 7 Jac. I. c. 4. Sect. 7.

To order Church-wardens and Overseers, to seize Goods and Profits of Lands of a putative Father, and lewd Mother of a Bastard-Child, towards Discharge of the Parish, to be confirmed at the Sessions. Stat. 13 & 14 Car. 2. c. 12. Sect. 19.

[Qu. Sess.] To do all Things concerning a Bastard, begot out of lawful Matrimony, that by Justices of Peace, in their several Counties, are by the Stat. of 18 Eliz. c. 3. limited to be done. Stat. 3 Car. I. c. 4. Sect. 15.

Is either before or after the Birth to be bound to the Good Behaviour, till Order be made by Two Justices, according to 18 Eliz. c. 3.

To be bound to the Good Behaviour, and so to the next Gaol-Delivery, (before the Judges of Assize) or to the next Quarter-Sessions.

In or next to the Limits of such Parish-Church, to examine the Cause and Circumstances, and to make an Order for the Relief of the Parish, in Part, or in all, and Keeping the Child, by charging the Father or Mother with weekly Payments, or other Relief, as also for Punishment of Father and Mother.

To be committed to the House of Correction, there to be punished, and set to Work one whole Year; for the second Offence, to be committed, till they find good Security for their Good Behaviour, not to offend again.

Offences.

Bedford Level.

Penalties.

[Two] Breaking down, or any ways hindring, or laying open the Inclosures in Bedford Level. Stat. 15 Car. 2. c. 17. Sect. 13.

Two Witnesses.

Twenty Pounds to be levied by Distress and Sale.

Offences.

Beer and Ale.

Penalties.

[Qu. Sess.] THE Rates and Prices of Beer and Ale to be set by the Justices, at their Discretions. Stat. 23 H. 8. c. 4. Sect. 5.

Brewers selling their Beer at other Prices than set by Justices. Stat. 23 H. 8. c. 4.

Six Shillings for every Barrel, 3 s. 4 d. for every Kilderkin, 2 s. for every Firkin, and 10 s. for every larger Vessel, and lesser 1 s. to be divided between the King and Prosecutor.

APPENDIX

Offences. Blasphemous Words. Penalties.

[One] **T**O take an Information of Blasphemous Words, within Four Days after the Words spoken, and not afterwards.

The Prosecution to be in Three Months after the Information. Stat. 9 & 10 W. 3. c. 32. Sect. 2.

Offences. Bone-Lace. Penalties.

[One] **U**PON Information given, to issue his Warrant to Constables, &c. to search for foreign Bone-lace, Cut-work, Embroidery, Fringe, Band-strings, Buttons, or Needle-work of Thread or Silk, and to seize them.

The Person selling or offering them to Sale, forfeits 50*l*. and the Goods: And the Person importing, 100*l*. and the Goods. One Moiety to the King, the other to him that sues in any Court of Record. Stat. 13 & 14 Car. 2. c. 13. Sect. 3.

Repealed as to Lace made of Thread in all Places, but the Dominion of the French King and the Duke of Anjou, by Stat. 5 Ann. c. 17.

Offences. Books. Penalties.

[One] **T**O grant a Warrant to search for any Book, taken out of any Parochial Library, and, if found, to restore it. Stat. 7 Ann. c. 14. Sect. 10.

Offences. Brandy. Penalties.

[Two] **B**Randy imported without Entry, is forfeited by 15 Car. 2. and may be adjudged against the Importer, or Proprietor, by Two Justices. Stat. 13 Car. 2. c. 13. Sect. 17.

To take the Oaths of Distillers, and others, That Brandy or Strong-Waters, intended to be exported, was drawn from Drink brewed from malted Corn, without any Mixture; and that the same is not mixed with Low-Wines, nor drawn a second Time; nor with any other Spirits, or Brandy, made from any other Materials; and that the Duties of the same are enter'd and paid; and that the same are exported for Merchandize. Stat. 2 W. & M. c. 9. Sect. 6.

Vide Title Brandy in Title Excise.

Offences. Brass. Penalties.

[Qu. Sess.] **A**T their Michaelmas-Sessions, yearly to appoint Searchers of Brass and Pewter. Stat. 19 H. 7. c. 6. Sect. 15.

Offences. Bricklayers and Tile-makers. Penalties.

AFTER 29 Sept. 1726. all Earth or Clay, designed for making Bricks for Sale in England, shall be dug and turned at least once, between 1 Nov. and 1 Feb. and no Part of such Clay shall be made into Bricks till after 1 March ensuing; and no Bricks shall be made but between 1 March and 29 Sept. and no Spanish after the said 29 Sept. shall be mixed with any Brick, Earth, or Clay, nor any Breeze used in Burning; and all Bricks shall be burnt either in Kilns, or in distinct Clamps by themselves; i. e. the Place-Bricks in Kilns or Clamps, and the Stock-Bricks, by themselves; and all Place-Bricks shall, when burnt, be not less than Nine Inches long, and Two Inches and a Half thick, and Four and a Quarter wide;

X x x x

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Offences.

Bricklayers and Tile-makers.

Penalties.

wide; and all Stock-Bricks shall be of the same Dimensions, as to Lengths and Breadths, and one Eighth Part of an Inch thicker; and all Pantiles made for Sale shall, when burnt, be not less than Thirteen Inches and an Half long, and Nine Inches and an Half wide, and Half an Inch thick.

All Persons who shall make Bricks for Sale, but between 1 March and 29 Sept. or shall make Bricks of Earth not dug and turned within the Time before set forth, or who shall burn Bricks otherwise than in Kilns or in Clamps distinct by themselves, or whose Bricks or Pantiles shall be of less Dimensions, shall forfeit 20 s. for every 1000 of Bricks, and 10 s. for every 1000 of Pantiles.

The Master and Wardens of Tilers and Bricklayers, or any Two of them, or any Four or more of the said Art and Society appointed by the Master, &c. may enter upon any Grounds and other Places where Earth or Clay shall be digged, or where Bricks and Pantiles shall be made, within Fifteen Miles of London, and search whether the Earth or Clay be good, or the Bricks and Pantiles well burnt, and of the Dimensions before prescribed; and if it appear at any of their Courts, on the View of the Master, &c. or of any Four of the same Art, to be annually nominated, that any Person has been guilty of making Bricks or Pantiles contrary to the Directions of the Act, he shall be summoned to appear before the next Court, so as there be Fourteen Days between the Summons and the Court, and shew Cause why a Penalty not exceeding the Sums after mentioned, shall not be levied on him for his Offence; and if he shall not attend, or on his Attendance shall not shew good Cause to the contrary, the Master, &c. shall fine him 20 s. for every 1000 of Bricks, and 10 s. for every 1000 of Pantiles; and if he shall refuse to pay the Fine, it may be recovered by Action of Debt, or be levied by Warrant under the Company's Seal, by the Clerk of the Company, by Distress and Sale.

If any Person thinks himself aggrieved by such Distress, he may appeal to the next Quarter-Sessions to be holden for the County in which such Distress was made, who are to hear and finally determine, and award Costs to either Party.

The Justices at their Quarter-Sessions to be held next after Epiphany in every Year, shall nominate Two or more Searchers for one Year only, to inspect the Earth or Clay designed for Bricks or Pantiles, and to search all Bricks as well before as after Burning, and to enter into any Grounds, &c. except within Fifteen Miles of London; and the Searchers are at least Twice in every Year, viz. at the next Quarter-Sessions after Easter and Michaelmas-Day, to make their Presentments under their Hands, of such as shall make Bricks or Pantiles contrary to the Directions of this Act; to which Presentment the Party summoned shall be obliged to appear, and traverse, deny, or confess the same at the next ensuing Quarter-Sessions; and if by Confession, or Verdict, he be convicted, or if he shall refuse to appear, then the several Penalties shall be levied on him, and distributed by the Justices; one Moiety to the Persons, who shall make such Presentments, and the other to the Poor of the Parish wherein the Offender shall live.

The Searchers to be appointed by the Master and Wardens, or by the Justices, shall be paid by every Brick-maker and Pantile-maker, for every 1000 of Bricks searched One Half-penny, and for every 1000 of Pantiles 1 d.

The Masters and Wardens of the Society, or any Four or more of the said Art by the Master, &c. appointed, shall have Power Twice in every Year, or oftner, to search and examine the Making of all plain Tiles, Roof, or Gutter-Tiles, made within London, or Fifteen Miles from the same; and they shall be paid the same Allowance for Searches, as any Persons by any Justices to be appointed pursuant to the Act 17 E. 4. about the Earth for making of Tiles, might have had; and they may summon Defaulters, and amerce them, and levy the Fines in the same Manner as the Company are impowered to levy for bad Bricks; and the Justices of the Peace, as well in London, or within Fifteen Miles, as of every County, at their Quarter-Sessions, may enquire, on the Complaints of any Brick-maker or Tiler, of the Defaults and Misdemeanors of the Searchers, and fine them, not exceeding 10 l. for their Defaults.

All Contracts heretofore or hereafter to be made between Brick-makers or Tilers, within Fifteen Miles of London, for engrossing of Bricks or Tiles, or restraining any Person from freely selling, or for fixing any certain Price under which they shall not be sold, are declared illegal, and the Offender, if a Brick-maker or Tiler, within Fifteen Miles of London, shall forfeit 20 l. and every Clerk, Agent, or Servant 10 l. One Moiety to the Poor of the Parish

Parish

APPENDIX

Offences.

Bricklayers and Tile-makers.

Penalties.

Parish where the Offence shall be committed, and the other to such Person as shall sue for the same within Six Months after the Offence, to be recovered with full Costs of Suit.

This Act shall be deemed a Publick Act; and if any Person shall be sued for any Thing done in Pursuance of this Statute, he may plead the General Issue, and give the Special Matter in Evidence; and no Person convicted by this Act shall be liable to be prosecuted by the Statute 17 Edw. 4. or any otherwise. Stat. 12 Geo. c. 35.

Offences.

Bridges.

Penalties.

Justices in their Sessions may inquire, hear, and determine the Annoyances of Bridges, and of Highways adjoining within 300 Foot, and may charge those who ought to repair the same. Stat. 22 H. 8. c. 5.

[Du. Sess.] To assess towards the Repair of Bridges, every Town, Parish, and Place, as they have been usually assessed, to be collected by the Constables, or such Treasurer, and in such Manner as the Justices shall appoint. The Assessments to be levied by Distress and Sale, upon Persons not paying in 10 Days after Demand. Stat. 1 Ann. Sess. 1. c. 18. Sect. 2.

Constable, &c. neglecting to collect Monies assess'd for Repair of Bridges: Or to pay the Money collected to the High Constable in Six Days after Receipt of the same. Stat. 1 Ann. Sess. 1. c. 18. Sect. 5.

Forty Shillings.

Treasurer, paying Money assess'd for Repair of Bridges, except by Order of Sessions. Stat. 1 Ann. Sess. 1. c. 18. Sect. 6.

Five Pounds.

Have Power to allow Persons concerned in the Execution of the Stat. 1 Ann. Sess. 1. c. 18. Three Pence per Pound. *ibid.* Sect. 9.

Note, No Fine for not repairing Bridges and Highways shall be returned into the Exchequer, &c. But to be returned to the Treasurer, and applied by the Justices towards the Repair of Bridges and Highways.

Offences.

Buggery.

Penalties.

[One] Buggery, by Stat. 25 H. 8. c. 6. Sect. 2. Felony.

Offences.

Bullion.

Penalties.

[One] Persons having unlawful Bullion, if they cannot prove on Oath, that the said Bullion before the Melting thereof, was not current Coin, or Clippings.

To be committed to Prison, in order to be tried upon an Indictment for Melting the Current Coin of this Realm. And in Case they do not make such Proof, to be committed for Six Months.

[Two] To enter the House, &c. of any Person suspected, and to search for unlawful Bullion, and, with the Assistance of a Constable, to break open the Door, Box, Trunk, Chest, &c. to search for, and discover the same, which if they find, they are to seize; and to carry the Person in whose Custody it is found before the next Justice. Stat. 6 & 7 W. 3. c. 17. Sect. 8.

Burials.

APPENDIX

Offences.

[One] **W**hen any Person is buried, if no Person doth, within Eight Days after Interment, bring an Affidavit to the Minister, &c. that the Person was buried in Woollen, upon a Certificate of this from the Minister. Stat. 30 Car. 2. c. 3. Sect. 4.

Burials.

Five Pounds, to be levied by Distress, and Sale of the Party's Goods; if he has none, of the Person where the Party died, or of any other who put the Party into the Coffin. Master's Goods liable for the Servants. Parents for Children. One Moiety to the Poor, the other to the Informer.

Penalties.

Affidavits of Burying in Woollen to be taken by one Justice of the Peace; but where no Justice of Peace shall reside, or be to be found in any Parish where the Party is to be interred, there the Parsons, Vicars, and Curates, (other than of the Parish or Place where the Party is interred) may take such Affidavits. Stat. 30 Car. 2. c. 3. Sect. 5. 32 Car. 2. c. 1. Sect. 3.

[Du. Sess.] To give in Charge the Act for Burying in Woollen. Stat. 30 Car. 2. c. 3. Sect. 8.

Offences.

[One] **B**utcher killing or selling any Vic-tual upon the Lord's Day. View, Confession, or Two Witnesses. Stat. 3 Car. 1. c. 1. Sect. 3.

Butcher.

Six Shillings and eight Pence, to be levied by Distress, &c. A Third to the Informer, the Rest to the Poor.

Penalties.

 Butchers are not allow'd by Law to buy fat Cattle and sell them again alive: And if they sell Swines Flesh measles, or Cattle dying with the Murrain, &c. they shall for the first Offence be subject to Amercement; for the Second, stand in the Pillory; and for the Third be fined. Stat. 15 Car. 2.

[Two] Butcher, or other Person, wilfully or negligently gashing, slaughtering, or cutting the raw Hide of any Ox, Bull, Steer, or Cow, or the Skin of any Calf, or being so gash'd, &c. offering the same to Sale.

To summon the Party accused, and the Witnesses on either Side, Party appearing or not, to examine Witnesses on Oath, and determine.

Prosecution in Three Months.

An Appeal lies to next Sessions. Stat. 9 Ann. c. 11. Sect. 45.

No Certiorari to be allowed, but Justices Determination to be final.

[Du. Sess.] If any Butcher in London, or Westminster, or in Ten Miles thereof, buy fat Cattle, and sell them again, alive or dead, to another Butcher. Stat. 22 & 23 Car. 2. c. 19. Sect. 3.

Prosecution in Six Months.

Butcher gashing any Hides. Stat. 1 Jac. 1. c. 22. Sect. 2.

2s. 6d. for every Hide, 1s. for every Calf's Skin.

One Moiety to the Poor, the other to the Informer, to be levied by Distress and Sale, if not redeemed in Six Days, rendering the Overplus, if any.

Justices may mitigate, so as the reasonable Costs and Charges in prosecuting be allowed over and above such Mitigation, and so as the Penalty be not reduced to less than one 4th Part.

To continue for Thirty-two Years.

Forfeits the Value of such Cattle, to be divided between the King and Prosecutor, the King's Moiety to be estreated, the Prosecutor's to be levied by *Fieri Fac'* or *Cap'*.

May proceed, notwithstanding any Certiorari.

20d. for every Hide, to be divided, one Third to the King, one to the Prosecutor, and the other to the City, Borough, Town, or Lord of the Liberty where the Offence is committed.

APPENDIX.

Offences.

Butcher watering of Hides, except in *June*, *July*, or *August*, or putting them to Sale, being putrified. Stat. 1 Jac. 1. c. 22.

Butcher.

Penalties.

3 s. 4 d. a Hide, to be divided, *ut supra*.

Vide Tanner.

Offences.

[One] Importers of Butter and Cheese out of Ireland. Stat. 32 Car. 2. c. 2. Sect. 9.

Butter and Cheese.

Penalties.

Liable to the Seizure and Penalties, as Importers of Cattle.

Vide Title Cattle.

Persons exchanging, or opening a Cask of Butter, sealed or marked by the Factor, or Buyer, or the Cask exchanged, or bad Butter packed up and mix'd with Good; and every Fraud committed by the Seller.

Confession, or one Witness. Stat. 4 & 5 W. & M. c. 7. Sect. 3.

Twenty Shillings for every Firkin, and Offence, to be levied by Distress and Sale. One Half to the Poor, the other to the Informer.

Warehouse-keepers, Weighers, Searchers, or Shippers, in any Port, refusing to receive Butter or Cheese, or to take Care thereof, or to ship the same successively. *Ibid.* Sect. 4. Conviction, *ut supra*.

Ten Shillings for every Firkin of Butter, and Two Shillings for every Weigh of Cheese. To be levied by Distress and Sale, and employed, *ut supra*.

Warehouse-keepers, &c. not keeping Books, and making Entries of Butter and Cheese, or making untrue Entries, or refusing in the Day-time to produce the Books to be searched. Stat. 4 & 5 W. & M. c. 7. Sect. 5. Conviction, *ut supra*.

2 s. 6 d. for every Firkin of Butter. The same for every Weigh of Cheese, and every other Offence. To be levied by Distress and Sale, and employed, *ut supra*. For Want of Distress to be committed till Payment.

Masters of Vessels coming to lade Butter and Cheese, or their Servants, refusing to take on Board any Butter and Cheese, as shall be tender'd to be shipped, by any Warehouse-keeper, &c. before their Vessels be laden. Stat. 4 & 5 W. & M. c. 7. Sect. 6.

Five Shillings for every Firkin of Butter, and Two Shillings and six Pence for every Weigh of Cheese. To be levied and employed, *ut supra*. Note, This extends not to the Counties of Chester and Lancaster, or the City of Chester.

Upon an Appeal, the Appellant is to give Bond of Twenty Pounds, with one or more Sureties, to the Liking of a Justice, to pay such Costs as the Court shall award, in one Month, after the Appeal is heard. *Ibid.* Sect. 10.

[Du. Sell.] May restrain the Retailers of Butter and Cheese. Stat. 1 Jac. 1. c. 22. Sect. 7.

The Retailer, during the Time of that Restraint, is under the Penalties of 3 & 4 Ed. 6. c. 21. and 5 & 6 Ed. 6. c. 14. against Fore-stallers, &c.

Where the Kilderkin of Butter weighs less than One hundred and twelve Pounds, 16 Ounces to the Pound; Firkin less than 36, Pot less than 14, besides Casks and Pots, or where old and corrupt Butter is put up with new and Sound, or Whey-Butter with Butter made of Cream, or Butter is salted with great

The Value of the Butter false pack'd, and six Times the Value of every Pound wanting. One Moiety to the Poor, where the Offence is committed, the other to the Informer, besides his double Costs.

To

APPENDIX

Offences.	Butter and Cheese.	Penalties.
great Sale, or more Sale than will preserve it. Stat. 13 & 14 Car. 2. c. 26. Sect. 2. Prosecution in Four Months.		
[Du. Sell.] Sellers of Butter, not delivering the Quantities aforesaid in every Kilderkin, &c. <i>Ibid.</i> Sect. 3.	To make Satisfaction at the Price for which it was sold. Prosecution in Four Months.	
Repackers of Butter for Sale. Stat. 13 & 14 Car. 2. c. 26. Sect. 4. Prosecution, <i>ut supra.</i>	Double the Value to be divided, <i>ut supra.</i> And to pay Costs, <i>ut supra.</i>	
If Butter for Sale be not pack'd in Casks of sound, dry, well-season'd Timber, mark'd with the Weight of the empty Cask, and the first Letters of their Christian Names, and Surnames at length, with an Iron Brand. Stat. 13 & 14 Car. 2. c. 26. Sect. 5. Prosecution, <i>ut supra.</i>	Ten Shillings for every 100 Weight, and so for greater or lesser Quantities. To be divided, and pay Costs, <i>ut supra.</i>	
[Du. Sell.] Potters exposing to Sale Pots for packing Butter without the Weight of it, and without the first Letter of the Christian Name, and Surname at length. Stat. 13 & 14 Car. 2. c. 26. Sect. 6. Prosecution, <i>ut supra.</i>	One Shilling for every Pot. To be divided and pay Costs, <i>ut supra.</i>	
Persons exposing Butter to Sale in Pots not mark'd, <i>ut supra.</i> Stat. 13 & 14 Car. 2. c. 26. Sect. 6. Prosecution, <i>ut supra.</i>	Two Shillings for every Pot. To be divided and pay Costs, <i>ut supra.</i>	
<i>Vide Baggers.</i>		
Offences.	Buttons and Button-holes.	Penalties.
[One] Importers, Barterers, Sellers, or Exchangers of foreign Buttons, made of Hair, or other foreign Buttons whatsoever. Stat. 4 & 5 W. & M. c. 10. Sect. 3.	Forfeit them, and are liable to the Penalties in 14 Car. 2. c. 13. for importing Bone-lace. <i>Vide Title Bone-lace.</i>	
Tailors, or others, making, selling, setting on, using, or binding, on any Clothes, Buttons, or Button-holes, made, used, or bound with Cloth, Serge, Drugget, Frize, Camlet, &c. One Witness. Stat. 4 Geo. c. 7. Sect. 1. Not to extend to Clothes made of Velvet. Sect. 2.	Forfeit 40 Shillings for every Dozen of such Buttons and Button-holes so made, &c. or in Proportion for any lesser Quantity. Between the Poor, where, &c. and the Informer. And if not paid in 14 Days, to be levied by Distress. And if no Distress, to be committed to hard Labour for Three Calendar Months. Sect. 5.	
Persons being in Gaol, or within the Rules or Liberties of any Gaol, or House of Correction, or inhabiting in privileged Places, or Liberties of the same, committing any Offence against Stat. 4 Geo. c. 7. Sect. 3.	Subject to the same Penalties, <i>ut supra.</i>	
Clothes made with Buttons and Button-holes of the same Cloth, &c. exposed to Sale	Forfeited, and may be seized and applied, <i>ut supra.</i>	Stat.

• A P P E N D I X

Offences.	Buttons and Button-holes.	Penalties.
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Sale in Fairs, Markets, Shops, Warehouses, or Dwelling-Houses.

Stat. 4 Geo. c. 7. Sect. 8.

Taylor, or others, causing his or their Apprentice, or Servant, to make any Clothes with Cloth-Buttons and Button-holes, if intitled to the Monies for making them. Stat. 4 Geo. c. 7. Sect. 9.

Liabie to the same Penalties, *ut supra*.

Note, All Offences against the Stat. 4 Geo. c. 7. to be prosecuted in Three Months after committed or discovered. Sect. 4.

No Person whatsoever in Great Britain, after 29 Septemb. 1722, to use or wear on any Cloths, Garments, or Apparel whatsoever, any Buttons or Button-holes made of or bound with Cloth, Serge, Drugget, Erize, Camlet, or any Stuffs whereof Clothes or wearing Garments are usually made.

One or more credible Witnesses, or Confession. Stat. 7 Geo. c. 12. Sect. 1.

Note, One or more Justices to summon the Party accused, and upon his Appearance or Confession to proceed to examine the Matter of Fact, and determine the same. *Ibid*. Sect. 2.

On Forfeiture of Forty Shillings for every Dozen of such Buttons or Button-holes so used or worn; or in Proportion for every lesser Quantity. Sect. 1.

To be levied by Distress and Sale. One Moiety to the Person on whose Oath any Person shall be convicted. The other to the Poor, where the Offence was committed. Sect. 2.

The Prosecution must be in one Month after Offence is committed. Sect. 4.

Note, An Appeal lies to the next General Quarter-Sessions, giving Eight Days Notice at least to the Prosecutor, whose Judgment is final. *Ibid*. Sect. 3.

The above Stat. does not extend to Velvet. Sect. 5.

[Two] Taylor, or other Person making, selling, setting on, using, or binding, on any Clothes, Buttons, or Button-holes, made with Serge, Stuff, Drugget, or any other Stuff, or causing them so to be made. Stat. 8 Ann. c. 6. Sect. 1.

Five Pounds for every Dozen so made, &c. to be levied, one Moiety to the Queen, the other to him who sues by Action of Debt, &c. But *Quare*, For that Act says only, That they shall levy the Penalty, but does not direct the Manner.

May Appeal to Quarter-Sessions.

[Du. Sess.] Upon an Appeal against the Order of Two Justices upon Complaint made against Taylors for making, &c. Cloth-Buttons, &c. To order the Appellant to pay reasonable Costs, if he be not relieved upon his Appeal. Stat. 8 Ann. c. 6. Sect. 2.

Persons aggrieved by the Order of one Justice, on Conviction for Offences against the Stat. 4 Geo. c. 7. may on giving sufficient Notice, appeal, &c. Sect. 6.

Sessions to allow such Costs and Charges to the Party grieved, as they shall think reasonable, to be levied and paid as in other Cases of Appeals. Their Award is final.

Offences.	Cards and Dice.	Penalties.
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[One] TO take the Affidavit of any Person or Persons, declaring the Grounds of his or their Knowledge, or Suspicion, That playing Cards or Dice are made, or caused to be made, in any House or Place in Great Britain, without Notice thereof in Writing given to the Commissioners of the Stamp-Duties, at their head Office. Stat. 6 Geo. c. 21. Sect. 27.

Upon

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Offences.

Upon Affidavit, as aforesaid, to grant his Warrant, directed to an Officer of the Duties on Cards and Dice, to empower him in the Day-time, and in Presence of a Constable, to break open the Door, or any Part of such House or Place, where Cards or Dice are so as aforesaid suspected to be made, or making, and to enter such House or Place, and to seize all such Cards, Dice, Tools, or Materials for making the same. And to detain and keep the same in such House or Place as the Commissioners of the Stamps shall direct. Stat. 6 Geo. c. 21. Sect. 57.

Cards and Dice.

Penalties.

Cards, Dice, Tools, and Materials, are forfeited, unless claimed or replevied by the Owner in Five Days after Seizure.

To be sold by Direction of the Commissioners.

One Moiety to the King, the other to the Party who discovers the same.

Offences.

[One] No Person whatsoever, after 25 Decemb. 1722. to use or wear in Great Britain, in any Garment or Apparel whatsoever, any printed, painted, stained, or dyed Callico.

Confession, or one or more credible Witnesses.

Prosecution in Six Days. Stat. 7 Geo. c. 7. Sect. 1. Sect. 1.

Persons wearing or using in Apparel, Household-stuff, or Furniture, after 25 Dec. 1722. any Stuff made of Cotton, or mixed therewith, which shall be printed with any Colour or Colours, or any Callico chequered or striped, or any Callico stitched or flowered in Foreign Parts with any Colour or Colours, or with coloured Flowers made there, Muffin Neckcloths and Fustians excepted. Stat. 7 Geo. c. 7. Sect. 1.

Callicoes.

Penalties.

Five Pounds for every Offence to the Informer.

One or more credible Witnesses.

One or more Justices to summon the Party accused, and upon his Appearance or Contention to proceed to examine the Matter of Fact, and determine the same. Stat. 7 Geo. c. 7. Sect. 1.

To be levied by Distress and Sale, &c.

The Prosecution must be in one Month after the Offence committed.

Are liable to the Penalties for using or wearing printed, painted, stained, or dyed Callicoes.

[Qu. Sess.] An Appeal lies to the next Quarter-Sessions, giving the Prosecutor Six Days Notice, whose Judgment is final. Ibid. Sect. 1.

Offences.

[One] Travelling with Waggon, Wain, Cart, or Carriage, with above Six Horses, Oxen, or Beasts. Stat. 6 Ann. c. 29. Sect. 3.

This extends not to such as carry Hay, Straw, Corn, Coal, Chalk, Timber, Materials for Building, Stone of all Sorts, Ammunition, or Artillery.

Carriers and Carriage.

Penalties.

Five Pounds, to be levied by Distress and Sale of any of the said Beasts, in Three Days.

One Moiety to the Highways, the other Moiety to the Prosecutor, so as he be an Inhabitant of the Town, Village, or Place.

Any Person or Persons may discover and prosecute Persons drawing with more than Six Horses, &c. contrary to Stat. 6 Ann. c. 29. and seize and distrain all or any the Horse, &c. the same to be delivered to the Surveyors of the Highways, or other Officer of the Place, where, &c. and if the Five Pounds be not paid in Three Days, the Distress to be sold, and the Money to be delivered to the Justice, to be distributed, as by the said Act is directed. Stat. 9 Ann. c. 18. Sect. 1.

A P P E N D I X

Offences.

Carriers and Carriage.

Penalties.

Persons refusing or neglecting to carry Horse, &c. distrained for Driving with above Six Horses, to the Surveyor, or other Parish-Officer. Stat. 9 Ann. c. 18. Sect. 2.

20*l.* to be levied by Distress and Sale; for Want of Distress, to be committed to the common Gaol, till Payment.

One Moiety to the Informer, the other to be laid out in the Repair of the Highways.

Surveyors of the Highways, or other Parish-Officer, refusing, or neglecting to deliver the Sum of Money, or Penalty by him received, to the Justice. Stat. 9 Ann. c. 18. Sect. 2.

Twenty Pounds, to be levied and dispos'd, *ut supra.*

Persons employed by any Carrier, or other Person subject to the Penalties in the said Acts of 6 and 9 Ann. driving, or assisting in the Driving, with more than Six Horses, &c. Stat. 9 Ann. c. 18. Sect. 3.

Five Pounds, to be levied and disposed, *ut supra.*

No travelling Waggon, Wain, Cart, or Carriage, wherein Goods shall be carried, other than according to the Stat. 6 Ann. c. 29. to be drawn, or go in any publick Highway or Road, with above 5 Horses, Oxen, or Beasts, at Length. Stat. 1 Geo. c. 11. Sect. 1.

Upon the like Forfeitures, in the 6 Ann. c. 29. or in the 9 Ann.

Carter, Drayman, Carman, Waggoner, or other Person, riding in any Cart, &c. not having another on Foot to guide it in the Streets of London and Westminster, Southwark, or other Streets within the Bills of Mortality.

Forfeit 10*s.* to be levied by Distress and Sale.

One Moiety to the Informer, the other to the Poor of the Parish, where, &c.

One Witness. Stat. 1 Geo. Sess. 2. c. 57. Sect. 8.

In Default of Payment to be committed to the House of Correction, for Three Days, to hard Labour.

No Waggon travelling for Hire shall go, or be drawn with more than Six Horses, either at Length, or in Pairs, or Side-ways. Stat. 5 Geo. c. 12. Sect. 1.

Owner or Driver forfeits all the Horses above Six, and all Geers, Bridles, &c. to the Use of the Person, who shall seize the same.

The Horse or Horses, or other Thing so seized or distrained, to be delivered to the Constable, or other Parish-Officer of the Place where, &c. till Proof upon Oath be made before some Justice, of the Offence, who is to issue his Precept to such Constable, &c. to deliver the Horse or Horses so forfeited, to the Person, who seized or distrained the same, and to allow reasonable Charges for keeping and securing the Horse, &c. 5 Geo. c. 12. Sect. 2.

No Cart travelling for Hire, shall go, or be drawn with more than Three Horses. 5 Geo. c. 12. Sect. 1.

Owner, or Driver, forfeits all the Horses above Three, and all Geers, &c. and to be seized, distrained, and applied, *ut supra.*

No Waggon travelling for Hire, having the Wheels bound with Streaks, or Tire of less Breadth than Two Inches and an Half, when worn; or being set or fastned on with Rose-headed Nails, shall go or be drawn with more than Three Horses. 5 Geo. c. 12. Sect. 3.

Forfeits, *ut supra.*

Persons hindring, or with Force attempting to hinder, or obstruct the Seizures, &c. made by Virtue of this Act, or who shall rescue, or use any Violence to Persons concerned in

To be committed to the common Gaol for Three Months, without Bail or Mainprize. And also forfeit Ten Pounds for every Offence.

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APPENDIX.

Offences.	Carriers and Carriage.	Penalties.
in making such Seizure, &c. 5 Geo. c. 12. Sect. 4. One Witness.		To be levied by Distress and Sale, if the Penalty be not paid within Three Days.
<i>Note.</i> This Act extends not to Waggon, Wains, Carts, or Carriages, employed in and about Husbandry, or manuring Land, and carrying of Cheese, Butter, Hay, Straw, Corn unthreshed, Coals, Chalk, or any one Tree, or Piece of Timber, or any one Stone, or Block of Marble, Carravans, and covered Carriages of Noblemen and Gentlemen, for their own private Use, or Timber, Ammunition, or Artillery for the King's Use. 5 Geo. c. 12. Sect. 5.		
Persons carrying at any one Load, in the Cities of London and Westminster, or within Ten Miles thereof, in Waggon or Cart, having their Wheels shod or bound with Tire or Streaks of Iron, more than 12 Sacks of Meal, each containing Five Bushels, and no more; nor more than 12 Quarters of Malt, nor more than seven Hundred and an Half of Bricks; nor more than one Chaldron of Coals. Stat. 6 Geo. c. 6. Sect. 1. One Witness.		Forfeit one of the Horses, together with the Geers, Bridles, &c. to any Person, that shall seize or distrain the same: In such Manner, and to such Uses as the Penalties and Forfeitures are to be levied and applied by the Stat. 5 Geo. c. 12.
[Two] Persons refusing to provide Carriages for the King for ready Money tendered, or refusing to appear. Stat. 13 Car. 2. c. 8. Sect. 2. 1 Jac. 2. c. 10. Sect. 2. 5 & 6 W. & M. c. 22. Constable's Oath, or two Witnesses.		Forty Shillings, to be levied by Distress and Sale.
Upon Notice by Warrant from the Lord High Admiral, or two principal Officers, or Commissioners of the Navy, or Master, or Lieutenant of the Ordnance, of what Carriages are required for the King, they are to issue Warrants to Places, not 12 Miles distant from the Place of Landing, to send sufficient Carriages, at 1s. a Mile, for every Tun of Timber, and 8d. a Mile for all other Provisions. Stat. 13 & 14 Car. 2. c. 20. Sect. 1.		
Persons refusing, neglecting, or delaying to find the Carriages above-mentioned. Stat. 13 & 14 Car. 2. c. 20. Sect. 3. Oath of the Constable, or other Officer, or Two Witnesses.		Twenty Shillings to be levied by Distress and Sale.
Waggoners or Carriers, taking more for Land-Carriage of Goods, than the Justices have assessed. Stat. 3 & 4 W. & M. c. 12. Sect. 24. Prosecution in Six Months.		Five Pounds, to be levied by Distress and Sale, for the Use of the Party grieved.
[Qu. Sess.] To assess yearly at Easter-Sessions, within their Jurisdiction, the Prices of Land-Carriage of Goods, by Waggoner or Carrier. Stat. 3 & 4 W. & M. c. 12. Sect. 24.		

Offences.	Cattle.	Penalties.
[One] Cattle, dead or alive, imported, except for Provision for the Vessel, to be made appear in 48 Hours. Stat. 18 Car. 2. c. 2. Sect. 1. Two Witnesses.		Forfeited; one Moiety to the Poor, the other to him who seizes.
2	Master	To

A P P E N D I X

Offences.

Cattle.

Penalties.

Master and Mariner of the Vessel where-
in Cattle are imported. Stat. 20 Car. 2. c. 7.
Sect. 5.

To be committed for Three Months.

Seizors of Cattle, Sheep, and Swine, im-
ported out of *Ireland*, not giving Notice in
Six Days after Conviction to Church-war-
dens and Overseers of such Seizure, and
they not distributing all but the Hides and
Tallow to the Poor. Stat. 32 Car. 2. c. 2. Sect. 6.
View, Confession, or one Witness.

40 s. for every of the great Cattle.
Ten Shillings for every Sheep or Swine.
One Moiety to the Poor, the other to the
Informers. To be levied by Distress and
Sale.
And in Default, to be committed for 3
Months without Bail or Mainprize.

[Three] To enquire by the Oaths of Twelve Men, Examination of Witnesses, or any
lawful Means, of the malicious Maiming, or otherwise Hurting any *Horses, Sheep*, or other
Cattle. And for that Purpose to issue Warrants to summon Jurors, suspected Persons, and
such as give Evidence. Stat. 22 & 23 Car. 2. c. 7. Sect. 6. *Quorum* 1.

Offences.

Certiorari.

Penalties.

[Qu. Sess.] NO *Certiorari* is to be allowed, unless the Indicted will become bound with
sufficient Sureties (such as the Justices of the Peace in Sessions shall like
of) to pay to the Prosecutor, in a Month after Conviction, such Costs and Damages as the
Justices shall assess. Stat. 21 Jac. 1. c. 8. Sect. 2.

Cheese. *Vide* Title Butter and Cheese.

Offences.

Church.

Penalties.

[One] Persons not repairing to Church
according to the 1 Eliz. c. 2.
Stat. 23 Eliz. c. 1. Sect. 5.

This is not to be extended to Protestant
Dissenters, by Stat. 1 W. & M. Sess. 1. c. 18.

Twenty Pounds a Month, and if forbear
for Twelve Months after Certificate made by
the Ordinary into the *Queen's Bench*.

To be bound with Two sufficient Sureties
in 200 Pounds at least, to be of the Good Be-
haviour, until they shall repair to Church.

Church-wardens to see that the Parishio-
ners come to Church every Sunday; and if
they find any in an Alehouse, &c. Stat. 1
Jac. 1. c. 5.

The Person to forfeit 3 s. 4 d. and the Ma-
ster of the House 10 s. as in Case of Tip-
pling.

Making a Disturbance in a Church or
Congregation, or misusing the Preacher.
Stat. 1 W. & M.

Two Witnesses.

The Offender to enter into a Recogni-
zance with Two Sureties, in 40 l. Penalty
for his Appearance at the next Quarter-Ses-
sions: In Default thereof, may be commit-
ted 'till then, and upon Conviction shall for-
feit 20 l.

Persons not repairing to some Church or
Chapel. Stat. 3 Jac. 1. c. 4. Sect. 27.
Confession, or one Witness.

This is not to be extended to Protestant
Dissenters, by Stat. 1 W. & M. Sess. 1. c. 18.

Twelve Pence for the Poor.
To be levied by Distress and Sale.
In Default of Distress to be committed.
The Prosecution to be in one Month.

Persons above Sixteen, absenting from
Church above one Month, impugning the
Queen's Authority in Causes Ecclesiastical,
frequenting Conventicles, or persuading others
to

To be committed till they conform them-
selves, and make Submission: He may re-
quire them to conform and submit, and if
they

APPENDIX

Offences.	Church.	Penalties.
so to do, under Pretence of Exercise of Religion. Stat. 35 <i>Eliz.</i> c. 4. Sect. 1. This is not to be extended to Protestant Dissenters, by Stat. 1 <i>W. & M.</i> Sess. 1. c. 18.	they refuse, they must abjure the Realm in open Assize or Sessions.	
Every Person not resorting to their Parish-Church, or upon Let thereof, to some other, every <i>Sunday</i> and Holy-Day. Stat. 1 <i>Eliz.</i> c. 2. Sect. 14. This affects not Protestant Dissenters.	Twelve Pence for the Poor. To be levied by the Church-wardens, by Distress and Sale.	
[Two] Incumbents not reading Divine Service once a Month. Stat. 13 & 14 <i>Car.</i> 2. c. 4. Sect. 3. Confession, or Two Witnesses.	Five Pounds for every Offence. To be levied in Ten Days by Distress and Sale.	
Persons disturbing Episcopal Congregations in <i>Scotland</i>, or misusing, &c. any Minister or Pastor thereof, on Proof by Two Witnesses. 10 <i>Ann.</i> c. 7. Sect. 9.	To be bound in a Recognizance of 50<i>l.</i> for their Appearance at the next Sessions, &c. or to be committed to Prison in Default.	
[Qu. Sess.] Every Person not repairing to Church according to 1 <i>Eliz.</i> c. 2. Stat. 23 <i>Eliz.</i> c. 1. Sect. 5. This extends not to Protestant Dissenters, nor where Divine Service is read in their Houses.	Twenty Pounds a Month, Two Thirds to the Queen, one to her own Use, the other for the Poor, the Third to the Prosecutor.	
Persons above Sixteen, convicted of Absence from Church for above a Month, without lawful Cause, impugning the Queen's Authority in Causes Ecclesiastical, or frequenting <i>Conventicles</i>, or persuading others so to do, under Pretence of Exercise of Religion. Stat. 35 <i>Eliz.</i> c. 1. Sect. 1. This extends not to Protestant Dissenters.	To be committed to Prison, till they conform themselves, and submit. And if within Three Months after they refuse to conform and submit, being requir'd by a Justice of Peace, they shall in open Sessions abjure the Realm, and the Justices are to certify the same at the next Assize or Gaol-Delivery.	
Keeping a School-master, who absents himself from Church, or is not allowed by the Bishop or Ordinary. Stat. 23 <i>Eliz.</i> c. 1. Sect. 6.	Ten Pounds a Month. To be divided, <i>ut supra.</i>	
Persons keeping or retaining any Person in their House (Servant, or other) which shall forbear to come to Church, for a Month together. Stat. 3 <i>Jac.</i> 1. c. 4. Sect. 32. This extends not to Protestant Dissenters.	Ten Pounds a Month. Children may relieve their Father or Mother, and Guardians their Wards or Pupils.	
Note, None shall be punished for any of his Wife's Offences against Stat. 3 <i>Jac.</i> 1. c. 4. Neither shall any married Woman be chargeable with any Penalty or Forfeiture of that Act.		
To receive the Letters of Orders of Episcopal Ministers in <i>Scotland</i>, before they officiate as Pastors of Congregations, and to order the same to be entred on Record by the Register or Clerk of the Peace, whose Fee is 1<i>s.</i> Stat. 10 <i>Ann.</i> c. 7. Sect. 2.	Persons disturbing such Congregations, &c. and convicted by Two Witnesses. Forfeit 100 Pounds, Half to the Informer, and Half to the Poor.	

A P P E N D I X

Offences.

Church.

Penalties.

And if any Magistrate having or pretending Authority in *Scotland*, shall forbid or hinder their Meeting or Assembling within their Jurisdiction, or cause the Doors of the House where they meet to be shut up. *Ibid.* Sect. 9.

On Conviction, *ut supra*, he forfeits 100 Pounds.

To be disposed, *ut supra*.

Offences.

Cloaths.

Penalties.

[One] **W**illfully and maliciously to assault any Person in the public Streets or Highways, with an Intent to tear, spoil, cut, burn, or deface, and who shall tear, spoil, cut, burn, or deface the Garments or Cloaths of any Person. If convicted. Stat. 6 Geo. c. 23. Sect. 11.

Felony, and to be transported for Seven Years.

Offences.

Cloth and Clothier.

Penalties.

(*Woollen*)

[One] **C**lothiers not paying their Work-folks their Wages in ready Money. Stat. 4 Ed. 4. c. 1. Sect. 6.

Treble Damages, and to be committed till Payment.

Carders, Spinsters, Weavers, Fullers, Sheermen, and Dyers, not performing their Duty. Stat. 4 Ed. 4. c. 1. Sect. 6.

Double Damages, and to be committed till Payment.

The Justice not doing his Duty, about seizing Ropes, and other Things, used for unlawful Stretching Northern Cloths, and other Matter, according to Stat. 39 Eliz. c. 20. Sect. 9.

Five Pounds, to be divided into Three Parts;

One to the Queen, another to the Informer, and the Third to the Poor.

Mix'd or Medly Broad-Cloth (after 'tis milled, &c.) to be measured at the Pulling-Mill by the Master or Occupier thereof; who is to make Oath, *That he will well and truly perform such Measuring* (before some neighbouring Justice, who is to give him a Certificate thereof) and affix a Seal to each Cloth, with his Name, and (in Figures) the Length and Breadth, before 'tis sold. Stat. 10 Ann. c. 16. Sect. 1. and 2.

If the Buyer refuse to take the Cloth according to the Measure so mark'd on the Seal, he forfeits 20 s. for each Cloth. As doth the Master for refusing or neglecting to fix such Seal.

And every Person who shall alter such Seal before the Cloth is sold, forfeits 20 s.

One Witness, &c. *Vide infra*.

Clothiers, &c. stretching or straining any such Cloth above a Yard in Twenty Yards Length, or above One Nail in a Yard in Breadth. Stat. 10 Ann. c. 16. Sect. 3.

Forfeits 20 s. for every Offence, if convicted before 'tis sold, or exposed to Sale.

One Witness, &c. *Vide infra*.

Mill-men, Owners or Occupiers of Pulling-Mills, to have a Table 12 Foot long, and 3 Foot wide, whereon the Cloth shall be doubled, or creased, and laid plain, and one Inch more instead of a Thumb's Breadth, *viz.* 37 Inches,

In Default of such Table provided, and constantly kept and used, every Person forfeits 10 l.

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Offences.	Cloth and Clothier.	Penalties.
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Inches, to prevent any Dispute in respect of Measuring by the Yard. Stat. 10 Ann. c. 26. Sect. 4.

One Witness, &c. *Vide infra.*

Clothiers, or others, concerned in the Woollen Manufacture, shall make Payment in Money to the Persons employed for all Work done in relation thereto, and not (in Lieu of Payment) impose or deliver any Sort of Goods, or Wares for such Work. Stat. 10 Ann. c. 16. Sect. 6.

One Witness, &c. *Vide infra.*

To forfeit for every Offence 20 s.

Note, All Offences against this Act may be heard and determined by one Justice, not concerned in the Matter of the Complaint, and upon the Oath of one Witness; and all the Penalties, &c. are Half to the Informer, and Half to the Poor. And if not paid within 14 Days after Conviction, the Justice may cause it to be levied by Distress, &c. And if no Distress, commit to the Gaol, or House of Correction, to hard Labour, not exceeding Three Months for each Offence; and all Offences to be prosecuted within 30 Days after committed, or Discovery made.

But an Appeal lies to the Sessions. Sect. 9. Also this Act is not to extend to *Torkshire*, or to invalidate the Act 7 Ann. c. 13. for the Length and Breadth of Cloths made there. Stat. 10 Ann. c. 16. Sect. 7, 8, 11.

Mixed and Medly Broad-Cloths to contain the Quantity mentioned in the Seals set by the Master or Occupier of the Pulling-Mill. Stat. 1 Geo. c. 15. Sect. 1.

Or Seller forfeits a 6th Part of the Value of every Cloth under Measure to the Poor of the Parish.

To be paid by the Buyer, and deducted out of the Price of the Cloth.

Owners and Occupiers, &c. refusing the Oath, *That he will well and truly perform such Measuring*, or not fixing a Seal, or others taking off, defacing or counterfeiting it.

One Witness. Stat. 1 Geo. c. 15. Sect. 2.

Twenty Pounds in Lieu of Twenty Shillings per Cloth, by 6 Ann. c. 29.

Clothier, Cloth-worker, Cord-maker, and all Persons concerned in the Woollen Manufacture, not paying their Servants, Labourers, &c. Wages in Money, or imposing on them Goods, &c. in Lieu thereof.

40 s. for every Offence. Stat. 1 Geo. c. 15. Sect. 12.

Mixed or Medley Broad-Cloths, to be sealed and stamped with the Watch-Measure on the Seal of the Master, Owner, Occupier, or Mill-man, by whom wetted, fulled, and milled; and every Clothier, selling or putting to Sale such Broad-Cloth before sealed. Stat. 1 Geo. c. 15. Sect. 5.

Forfeits a 6th Part of such Cloth.

Note, All Offences against this Act may be heard and determined by One Justice, not concerned in the Matter of the Complaint, upon the Oath of One or more Witness or Witnesses. And all the Penalties, &c. are in *London* to *Christ's Hospital*; and in all other Places to the Poor. And if not paid in 30 Days after Conviction and Demand, or in Case the Owner, &c. refuse or neglect to repay the Forfeiture for Want of sufficient Length or Breadth of Admeasurement; the Justice may cause the Penalties, &c. to be levied by Distress, &c. And if no Distress, commit to the Gaol, or House of Correction to hard Labour for Three Kalendar Months. Stat. 1 Geo. c. 15. Sect. 7.

All

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Offences.

Cloth and Clothier.

Penalties.

All Offences against the Stat. 1 Geo. c. 15. (saying where Owner, &c. refuse Repayment of the Forfeitures for Want of sufficient Length or Breadth in Admeasurement) to be prosecuted within 40 Days after committed or discover'd. Stat. 1 Geo. c. 15. Sect. 8.

(Linen)

Linen-Cloth made in Scotland, to be of well sorted Yarn, and equally wrought, and fine from one End of the Piece to the other, and made by the Standard Yard-Wand. And all St. Johnstons, or other Plain, Brown, or Green Cloth, made for Whitening, one Yard and a Nail, or Three Quarters and a Nail broad, that when whited, it may be a full Yard, or full Three Quarters broad; and in Length the whole Piece 84 Yards, the Half Piece 42 Yards, &c. that so whited it may be 80, or 20 Yards, &c. and all other Sorts of plain Cloth a full Yard in Breadth, and in Length 40 Yards the Piece, 20 Yards the Half Piece, &c. And see, *ibid.* other Measures appointed for Linen Checks, striped Linen, Neckcloths, Ticken, &c. Stat. 10 Ann. c. 21. Sect. 1.

And for Dornick, Towelling, or Plain Linen, see 12 Ann. Sess. 1. c. 20. Sect. 1 and 2.

And all Cloth to be sold in Scotland to be made up in Folds of One Yard and Half each Fold, and not rolled or battered. Stat. 10 Ann. c. 21. Sect. 1.

The Owners of Scotch Linen-Cloth, before exposed to Sale, to bring it to some Borough-Town, or Place, where Stamps are appointed, there to be stamped. Stat. 10 Ann. c. 21. Sect. 3.

And if any other Person shall in Scotland, buy, export, transport, or carry to the Water-Side for that Purpose, Scotch Linen-Cloth not stamped as aforesaid. *Ibid.* Sect. 4.

If any Person counterfeits any Stamp, or affix it without Authority. *Ibid.* Sect. 4.

No Stamp-Master, for himself or any other, to buy or dispose of any Linen-Cloth, or stamp any that is not made of well-sorted Yarn, equally wrought, and of equal Fineness, from one End to the other, and of the said Lengths, Breadths and Foldings. *Ibid.* Sect. 4.

Making Use of Lime or Pigeons Dung for whitening or bleaching Linen-Cloth in Scotland, and convicted by Two Witnesses, or Confession. *Ibid.* Stat. 10 Ann. c. 21. Sect. 5.

Note, All the Forfeitures and Penalties of this Act are Half to the Informer, and Half to the Poor.

If any make Linen-Cloth in Scotland otherwise, and thereof convicted by Oath of any Overseer or Searcher, or Two credible Witnesses,

He forfeits for every Inch less than Measure in Breadth, and every Yard less in Length, Five Shillings.

And for every Piece not made of well-sorted Yarn, and equally wrought, and fine, Five Shillings.

And if any shall buy or expose to Sale, or bring to any Town or Place in Scotland, for Sale, any Linen-Cloth not made or not folded as aforesaid, if convicted within Six Months, forfeits for each Piece Five Shillings.

And if exposed to Sale, or carried to the Water-side for Exportation before stamp'd, and thereof convicted, *ut supra.*

Forfeits for each Piece Five Shillings.

If convicted, *ut supra*, in Scotland.

He forfeits for each Piece 5 s.

He forfeits 50 l. Sterling, or a Year's Imprisonment, if insolvent.

On Forfeiture of Five Shillings for each Piece, and incapacitated of his Office for the Future.

Forfeits for each Piece 20 l. and in Default of Payment, to levy it by Distress, &c. And if no Distress, commit to the House of Correction, or Gaol, to hard Labour, not exceeding 12 Months.

A P P E N D I X

Offences.	Cloth and Clothier.	Penalties.
[Two] To appoint once a Year Overseers for the well-ordering of Cloth. Stat. 3 & 4 Ed. 6. c. 2. Sect. 9.		
Faulty Cloths exposed to Sale by Retail. Stat. 5 & 6 Ed. 6. c. 6. Sect. 43.		To be divided into 3 Parts, one to the King, another to the Justice, the third to the Prosecutor.
Logwood which is deceitfully used for dying of Cloth. Stat. 23 Eliz. c. 9. Sect. 2.		To be seized, and openly burnt. And the Dyer forfeits double the Value of the Cloth, Wool, or other Thing dyed with it.
To appoint Overseers to make Search once a Month, at least, for Defects of Northern Cloths. Stat. 39 Eliz. c. 20. Sect. 4.		
Sorters, Carders, Kembers, Spinsters, or Weavers of Wool or Yarn, who shall imbezil, or detain any Part from the Owner. Stat. 7 Jac. 1. c. 7. Sect. 2.		Either to make Satisfaction, or be whipp'd, and put in the Stocks.
Makers of deceitful Cloth. Stat. 21 Jac. 1. c. 18. Sect. 3.		Five Pounds, to be certified under Hand and Seal to the Church-wardens and Overseers of the Poor of the Parish, where the Offence is committed. To be levied by Distress and Sale, &c. And for Want of Distress, Imprisonment.
Confession, or Two Witnesses.		
[Three] If any Means be used whereby Linen-Cloth shall be deceitful, or made worse for Use. Stat. 1 Eliz. c. 12. Sect. 1. Quor' 1.		The Cloth is forfeited, and the Person to be committed for a Month, and fined.
[Du. Sess.] Persons stretching or straining any Cloths made on the North-side of Trent. Stat. 39 Eliz. c. 20. Sect. 12. Vide Stat. 10 Ann. c. 16.		Five Pounds, one Third to the Queen, another to the Informer, and another to the Poor of the Place where the Offence is committed.
Persons, using any Engine, or stretching or straining Cloths. Stat. 39 Eliz. c. 20. Sect. 2.		Twenty Pounds, to be divided, <i>ut supra</i> .
If a Seal of Lead be not set on Northern Cloths. Stat. 39 Eliz. c. 20. Sect. 3.		The same is forfeited, and 4s. for every Yard it wants of due Length; and 2s. for every Pound it wants of due Weight, to be divided, <i>ut supra</i> .
If any, save the Overseers, set or take away a Seal, to or from the said Cloths, without Warrant. Stat. 39 Eliz. c. 20. Sect. 7. Two Witnesses.		Ten Pounds for the first Offence, 20l. for the Second. To be divided, <i>ut supra</i> . And besides suffer the Pillory.
Servants to Clothiers, &c. refusing to serve for the Wages limited, according to the Statute; and being retained, departing his or their Service, without a Quarter's Warning, or some lawful Cause. Stat. 5 Eliz. c. 4. Sect. 9.		To be imprisoned, without Bail; but upon Submission to perform the Service, to be enlarged without Fee.
Woollen Cloth Weavers taking an Apprentice, or teaching any their Art, save their own Children, or such whose Parents have 3 Pounds per Annum Freehold. Stat. 5 Eliz. c. 4. Sect. 29.		Twenty Pounds for every Month.
4	Every	Ten

APPENDIX.

Offences.	Cloth and Clothier.	Penalties.
Every Cloth-Worker, Fuller, Sheerman, Weaver, Taylor, and Shoemaker, who does not keep one Journey-man for every Three Apprentices; and for every Apprentice above Three, another Journeyman. Stat. 5 Eliz. c. 4. Sect. 33.		Ten Pounds. Not to extend to <i>Norwich</i> and <i>Norfolk</i> .
Persons aggrieved by the Order of one Justice, on a Conviction touching <i>Mixed Broad-Cloth</i> , may, on giving sufficient Notice, appeal to the Quarter-Sessions, whose Determination is final. Stat. 10 Ann. c. 16. Sect. 9. 1 Geo. c. 15. Sect. 10.		If the Sessions confirm or disannul the Order, they shall allow such Costs and Charges to the Party grieved, as they think reasonable. To be levied and paid as in other Cases of Appeal.
Note, Stat. 1 Geo. c. 15. does not extend to any Factor or his Agent, employed in Selling of <i>Mixed</i> or <i>Medley Broad-Cloth</i> . Sect. 11. Nor to any Cloth made in <i>Yorkshire</i> , or to invalidate the Act 7 Ann. c. 13. for the Length and Breadth of Cloths made there. Sect. 14.		
In <i>Scotland</i> , to appoint <i>Stamps</i> , to be kept at proper Places, where Linen-Cloth is sold, for the Stamping or Marking thereof, and to appoint qualified Persons for Stamping it, who are to take an Oath <i>de Fidei</i> , and find Sureties for the faithful Execution of the Office in such Sum as the Sessions shall appoint. Stat. 10 Ann. c. 21. Sect. 4.		
Persons aggrieved by the Order of one Justice on a Conviction touching <i>Mixed Broad-Cloth</i> , on the Stat. 1 Geo. c. 15. may, on giving sufficient Notice, appeal, &c. to the Quarter-Sessions, whose Determination is final. Sect. 10.		To allow such Costs and Charges to the Party griev'd, as they think reasonable. To be levied and paid as in other Cases of Appeals.
See the Act for the better regulating the Manufacture of Cloth in the <i>West-Riding</i> of the County of <i>York</i> . 11 Geo. c.		
All Contracts, Covenants, or Agreements, and all By-Laws, Ordinances, or Orders in unlawful Clubs and Societies made between Persons brought up in the Mystery of a Wool-comber or Weaver, for Regulating the Trade, or Settling the Prices of Goods, or for Advancing their Wages, or lessening their usual Hours of Work, shall be illegal and void; and if any Wool-comber or other Person concerned in the Woollen Manufactures, shall, after 24 June, 1726. keep up any Contract or Combination by this Act declared illegal, being convicted on Oath before any Two or more Justices, on Information within Three Kalendar Months after the Offence committed, shall be committed either to the House of Correction not exceeding Three Months, or to the common Gaol, without Bail.		
If any Person retained as a Wool-comber or Weaver shall depart from his Service before the End of the Term for which he shall be hired, or shall return his Work before it is finished according to Agreement, unless it be for some reasonable Cause, he shall be committed to the House of Correction not exceeding Three Months; and if any Person hired shall wilfully damnify his Work, he shall forfeit to the Owner double the Value, or be committed to the House of Correction.		
Every Clothier shall pay the full Prices agreed on in Money, and not in Goods; and any Two Justices, on Complaint, may summon the Party offending, and for Non-payment of Wages may issue their Warrants for Levying thereof by Distress, and for Want of Distress may commit the Party to the common Gaol for Six Months, or till he shall pay the Wages.		
If any Clothier shall pay the Persons employed by him either in Goods, or by Way of Truck, he shall forfeit 10 <i>l.</i> Moiety to the Informer, Moiety to the Party aggrieved.		
Persons aggrieved by Order of the Justices may appeal to the next Quarter-Sessions, giving reasonable Notice of such Appeal; and if it shall appear to them that reasonable Notice was not given, they shall adjourn the Appeal to the next Quarter-Sessions, and then finally determine the Matter, and may award reasonable Costs to either Party.		

APPENDIX.

Offences.

Cloth and Clothier.

Penalties.

If any Persons shall assault a Master Wool-comber or Weaver, whereby he shall receive any bodily Hurt, for not submitting to any illegal By-Laws; or shall write, or send any Letter or Message threatening Hurt to a Master, or to burn, or pull down his House, or to cut down his Trees, or maim his Cattle, for not complying with their Demands, being thereof convicted upon any Indictment to be found within Twelve Kalendar Months next after the Offence, he shall be adjudged guilty of Felony, and shall be transported for Seven Years to one of the Plantations in *America*.

If any Person shall break into a Shop by Day or Night to destroy any Woollen Goods in the Loom, or any Tools employed in making thereof, or shall cut or destroy any such Goods in the Loom, or on the Rack, or shall destroy any Rack, or Tools, he shall be adjudged a Felon, and suffer Death without Benefit of Clergy.

This Act and all the Provisoos therein shall extend to Combers of Jersey and Wool, to Frame-work Knitters or Makers of Stockings, and to all Persons concerned in any of the said Manufactures. 12 Geo. c. 34.

Coaches. Vide Hackney-Coaches.

Offences.

Coals.

Penalties.

[One] Persons having a Hand in removing or altering the Marks upon Keels and other Boats, Carts and Wains for Carriage of Coals, in the Port of *New-Castle upon Tyne*. Stat. 30 Car. 2. c. 8. Sect. 6. 6 & 7 W. 3. c. 10. Sect. 7. One Witness.

Ten Pounds, to be levied by Distress and Sale; and on Default to be committed for Three Months.

Offences.

Coin and Coining.

Penalties.

[One] Sheriff or other Officer refusing any lawful Coin in Payment. Stat. 19 H. 7. c. 5. Sect. 6.

May compel him to take it, and otherwise punish him at Discretion.

Where any Tools or Instruments for Coining, or counterfeiting Gold, or Silver Monies are found. Stat. 8 & 9 W. 3. c. 26. Sect. 5.

The Instruments and the Persons in whose Custody they are found, to be seized and carried before a Justice. And the Persons and Instruments to be secured, and Instruments to be produced as Evidence, and afterward defaced and destroyed.

Counterfeit Money given in Evidence to be cut in Pieces afterwards, and then given to the Party.

Offences.

Commission of the Peace.

Penalties.

[Du. Sess.] In every Commission of the Peace this Clause is to be inserted, viz. That the Justices of Peace in their Sessions shall have Power to enquire of Watches, and to punish them who shall be found in Default, according to the Statute of *Winchester*. Stat. 5 H. 4. c. 3.

Offences.

Conformity.

Penalties.

[Du. Sess.] To take the Oath of Persons having Offices, &c. convicted

None to suffer, unless Oath be made of the Offence within 10 Days, before a Justice. And

A P P E N D I X

Offences.	Conformity.	Penalties.
victed of <i>Non-Conformity</i> , That they have conformed for a Year past, and received the Sacrament Three Times within the Year. Stat. 10 Ann. c. 2. Sect. 4 & 5.	And Prosecution thereupon within Three Months after the Offence committed. And Conviction by the Oath of Two Witnesses.	

Offences.	Conspiracies.	Penalties.
[Qu. Sess.] Butchers, Brewers, Bakers, Poulterers, Cooks, Costermongers or Fruiterers, who conspire, or promise together, that they will not sell their Victuals but at certain Prices. Stat. 2 & 3 Ed. 6. c. 15. Sect. 1.	First Offence, 10 l. to the King, and if not paid in 6 Days after Conviction, 20 Days Imprisonment, with Bread and Water. Second Offence, 20 Pounds, and if not paid in 6 Days, Pillory. Third Offence, 40 Pounds, and if not paid in 6 Days, Pillory again, Loss of an Ear, and infamous.	

Offences.	Constables.	Penalties.
[Two] If Constables, Headboroughs, or Tithing-men die, or go out of the Parish, may swear new ones, till the Lord of the Manor holds a Court-Leet, or till the next Quarter-Sessions. Stat. 13 & 14 Car. 2. c. 12. Sect. 9.		
Constables not apprehending Vagabonds, wandering Beggars, &c. Stat. 11 & 12 W. 3. 1 Ann. One Witness.	Twenty Shillings, to be levied by Distress and Sale, one Fourth Part to the Informer, the other to the Poor.	
Constables to remove loose, idle and disorderly Persons, from begging in the Streets, on Complaint of Two Inhabitants. Stat. 12 Ann. Sess. 2. c. 23.	On their Refusal to depart, or offending a second Time, may cause them to be whipp'd; but in the first Case a Justice's Warrant is to be first procur'd.	
Constables, &c. refusing so to do, on Oath thereof made within Twenty-four Hours by Two Witnesses before one Justice.	Forfeit 10 s. to the Poor, to be levied by Distress, &c.	
Constables, &c. neglecting their Duty in putting the Vagrant Act in Execution, &c. Stat. 12 Ann. c. 23.	Forfeit for every Offence 20 s. for the Use of the Poor, to be levied by Distress.	
Constables neglecting to put the Acts of Parliament in Force against unlicenc'd Alehouse-keepers. Stat. 3 Car. c. 3.	To forfeit 40 s. for the Use of the Poor.	
If a Constable refuse to obey a Warrant from a Justice, for rewarding Apprehenders of Rogues, Vagabonds, &c. Stat. 13 & 14 Car. 2. c. 14.	The Justice to cause him to pay to such Persons as apprehend Vagabonds, &c. 10 s. or so much thereof as he shall think fit.	

Offences.	Conventicles.	Penalties.
[One] Persons of the Age of 16 or upwards, Subjects of this Realm, who shall be present at any Conventicle, under Pretence of Exercise of Religion, in other Manner than according to the Church of	To record the Offence, which is a Conviction, and set a Fine of Five Shillings, for the 1st Offence, which Record must be certified to the next Quarter-Sessions.	

APPENDIX.

Offences.	Conventicles.	Penalties.
of England, to the Number of Five, or more, besides those of the Household. Confession, Two Witnesses, or notorious Evidence of the Fact. Stat. 22 Car. 2. c. 1. Sect. 1.		2d Offence Ten Shillings, to be levied by Distress, &c. or in Case of Poverty on the Goods of others then convicted of the like Offence at the same Conventicle, not exceeding 10 Pounds on any one Person.
Protestant Dissenters are exempt from the Penalties of this Act, by Stat. 1 W. & M. c. 18. Sect. 4.		Penalties to be levied by Constables, &c. per Warrant of a Justice, and delivered to the Justice, and he to pay one Third for the King's Use into the Quarter-Sessions.
		Another Third to the Poor of the Parish where, &c.
		The other Third to the Informer, and to such as he shall think fit.
Persons convicted of Preaching at any such Meeting. Stat. 22 Car. 2. c. 1.		Forfeits for first Offence 20 l.
Not to extend to Protestant Dissenters, by Stat. 1 W. & M. c. 18. Sect. 8.		And if a Stranger, and his Name or Habitation not known, or he can't be found, or unable to pay.
		Penalty to be levied on any Persons that were present.
		Second Offence 40 Pounds, to be levied and disposed, <i>ut supra</i> .
Persons convicted of wittingly suffering any such Meeting to be held in his House, Yard, &c. Stat. 22 Car. 2. c. 1. Sect. 4.		Twenty Pounds, to be levied and disposed, <i>ut supra</i> .
		And in Case of Poverty upon Persons present.
Constables, &c. knowing, or being informed of such Meetings within their Precinct, and who shall not inform a Justice or Chief Magistrate, &c. but shall wilfully omit their Duty, on Conviction. Stat. 22 Car. 2. c. 1. Sect. 12.		Forfeit Five Pounds, to be levied and disposed, <i>ut supra</i> .

Note, Justices and Chief Magistrates, &c. omitting their Duty, forfeit One hundred Pounds. One Moiety to the Informer, to be recovered in any of the Courts at *Westminster*. *Ibid*.

[Two] Or Constables, &c. by Warrant from them, may with what Assistance they think fit, break and enter any House where they shall be informed any such Conventicle is, within Liberties and without, and take into Custody the Persons so assembled: And the Lieutenants, Deputy-Lieutenants, or any commissioned Officer of the *Militia*, or other the King's Forces with Horse and Foot, and the Sheriffs and other Ministers of Justice, with such Assistance as they shall think fit, on Certificate under Hand and Seal of any Justice of Peace or Chief Magistrate, of such Meeting, that he is not able to suppress, may dissolve such Meetings, and take the Persons present into Custody. Stat. 22 Car. 2. c. 1. Sect. 9.

Not to extend to Protestant Dissenters.

No Dwelling-house of a Peer, where he or his Wife shall be resident, to be searched but by Warrant under the Sign Manual, or in the Presence of the Lieutenant, or one Deputy-Lieutenant, or Two Justices of Peace. *Quorum* 1. Stat. 22 Car. 2. c. 1. Sect. 10.

[Du. Sess.] To deliver the King's Third of the Penalties incurred by this Act to the Sheriff, and to make a Record of such Payment and Delivery, which shall discharge the Justices, and charge the Sheriff, both which are to be certified into the *Exchequer*. Stat. 22 Car. 2. c. 1. Sect. 2.

Where

APPENDIX.

Offences.

Conbenticles.

Penalties.

Where the Sum charged upon any Offender exceeds Ten Shillings, he may, within a Week, appeal in Writing to the Quarter-Sessions, to whom the Justices, &c. shall return the Money levied, and certify under Hand and Seal the Evidence, with the whole Record and the said Appeal, whereupon such Offender may plead, and have his Trial by a Jury, and if he prosecute not with Effect, or be not acquitted, or Judgment pass not for him, he shall pay treble Costs; such Appeal is final. Stat. 22 Car. 2. c. 1. Sect. 6.

Note. All Prosecutions upon the Stat. 22 Car. 2. c. 1. to be within Three Months after the Offence.

Vide Title Church.

Offences.

Conbats.

Penalties.

[Two] ANY Person having the Benefit of his Clergy, and being committed to the House of Correction, and escaping out of Prison, and being retaken. Stat. 5 Ann. c. 6. Sect. 3. *Quorum* 1.

To be committed to some House of Correction, or publick Work-house, in the Place where retaken, without Bail or Main-prize, for not less than 12 Months, and not exceeding 4 Years, to be set to work, and kept to hard Labour.

Offences.

Coopers.

Penalties.

Brewers not putting their Drink in a Vessel marked by a Cooper. Stat. 23 H. 8. c. 4.

Three Shillings and four Pence a Barrel.

[Du. Sess.] The Rates and Prices which Coopers are to sell their Vessels at, to be set in Sessions after Easter yearly. Stat. 8 Eliz. c. 9. Sect. 5.

Offences.

Corn.

Penalties.

[Du. Sess.] AFTER Michaelmas and Easter, yearly, they are, by the Oaths of Two or more Persons of the respective Counties, where foreign Corn or Grain shall be imported, not concerned in importing it, and of 20 l. per Annum Freehold, or 50 l. per Annum Leasehold, or by such other Means as they shall think fit, to determine the Market-Prices of midling English Corn, and to certify the same with Two such Oaths to the Officer of the Customs, to be hung up in the Custom-house there. Stat. 1 Jac. 2. c. 19. Sect. 3.

To be done in London, in October and April, by the Lord Mayor, Aldermen, and Justices of Peace there.

Vide Title Dyehard.

Offences.

Coroner.

Penalties.

[Du. Sess.] Coroner not doing his Duty without Fee, where a Person is slain by Misadventure. Stat. 1 Hen. 8. c. 7. Sect. 1.

Forty Shillings.

Offences.

Costs.

Penalties.

Where Costs are given upon an Appeal, from an Order of Settlement

The Costs to be levied by Warrant of one Justice of the County where the Party dwells.

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APPENDIX

Offences.	Costs.	Penalties.
ment of the Poor determin'd; or where Notice is given, and the Person order'd to pay such Costs, dwells out of the Jurisdiction of the Court, which gave the Costs. Stat. 8 <i>Edw. 3. c. 30.</i> Producing a true Copy of the Order for Costs, on Oath of one Witness.	dwells, by Distress and Sale; and for Want of Distress, the Party to be committed to the common Gaol for Twenty Days. <i>Note.</i> Upon an Appeal, the Appellant is to give Bond of 20 <i>l.</i> with one or more Sureties to the Liking of a Justice, to pay such Costs as the Court shall award, in one Month after the Appeal is heard. Stat. 4 <i>Edw. 3. M. c. 7.</i>	

Offences.	Cottages.	Penalties.
[Du. Sess.] Erecting a Cottage for Habitation, without Four Acres of Freehold. Continuance of it. Stat. 31 <i>Eliz. c. 7. Sect. 1.</i>	Ten Pounds to the Queen. Forty Shillings a Month to the Queen.	
Owner or Occupier of a Cottage, suffering any more Families than one to dwell there. Stat. 31 <i>Eliz. c. 7. Sect. 3.</i>	Ten Shillings a Month to the Lord of the Lect.	

Note. The Stat. 31 *Eliz. c. 7.* extends not to Cottages in Cities, Boroughs, or Market-Towns, or provided for Labourers in Mines or Quarries, within one Mile of them; or for Sea-faring Men in a Mile of the Sea, or a navigable River; or for Keeper, Warrener, Shepherd, or Herdsman; or an impotent Person; or to Cottages, which by Order of Justices of Assize, or Justices of Peace in Sessions, shall be decreed to continue for Habitation. Stat. 31 *Eliz. c. 7. Sect. 4.*

Offences.	County-Courts.	Penalties.
[One] Sheriff, Under-Sheriff, or Sheriff's Clerk, entering in the County-Court, any Plaintiff in the Absence of the Plaintiff or his Attorney, or having above one Plaintiff for one Cause. Stat. 11 <i>H. 7. c. 15. Sect. 6. 8.</i>	Forty Shillings, to be divided between the King and the Prosecutor. To examine this Matter; and if the Party be found guilty, to certify the Examination into the <i>Exchequer</i> within 3 Months, in Pain of 40 Shillings. The Certificate is a Conviction.	
The Officer who collects the <i>Estreats</i> out of the County-Court, if he levies more than is contain'd in them. <i>Ibid.</i>	Forty Shillings; the Matter to be examined and certified, <i>ut supra.</i>	
The Defendant in the County-Court not having lawful Summons, the Bailiff being found Faulty.	Forty Shillings, upon Examination, <i>Et ut supra.</i>	

[Two] To view the *Estreats* of Sheriffs before they issue them out of the County-Court; and there are to be Two Parts of them indented and seal'd by the Justices and Sheriff; and one Part is to remain with the Justices, and the other with the Sheriff. Stat. 11 *H. 7. c. 15. Sect. 6. 8.*

Vide Titles Bailiffs and Sheriffs.

Offences.	Carrier.	Penalties.
[Du. Sess.] Carrier currying Hide or Skin insufficiently tann'd and	Six Shillings and eight Pence a Skin or Hide, besides the Value of the same.	To

APPENDIX

Offences.

and dried, or out of his own House, in some Corporate or Market-Town, or gashing or spoiling them. Stat. 1 Jac. 1. c. 22. Sect. 22.

Persons in London, or Three Miles, putting any Leather to be curried to any but Freemen of the Curriers Company. *Ibid.* Sect. 23.

Within the Jurisdiction of London, Persons putting into made Wares any curried Leather, before it be searched and sealed. *Ibid.* Sect. 24.

Carrier using the Art of a Tanner, Cordwainer, Shoe-maker, Huteber, or any other who useth cutting of Leather. *Ibid.* Sect. 25.

Carrier (sufficient Stuff being tender'd unto him) refusing sufficiently to curry Leather within Eight Days in Summer, and Sixteen in Winter, after he takes it in Hand. *Ibid.* Sect. 24.

Carrier in London not Currying his Leather sufficiently, other Artificers (using tanned and curried Leather) putting into his Wares Leather insufficiently tann'd or curried. *Ibid.* Sect. 44.

Curling. *Vide* Title Swearing and Curling.

Offences.

If any Person shall cause any Goods, for which Customs are to be paid, by Statute 12 Car. 2. c. 14. to be landed, &c. without Entry made, the chief Magistrate of the Port, or of the Place next adjoining, may issue out a Warrant for the Apprehension of the Offender, and the Constable may seize the Goods, and break open the House to do the same, if Resistance be offered in the Day-time.

[Due] Persons resisting, abusing, beating, &c. Custom-house Officers, or their Deputies, in the Execution of their Office. Stat. 13 & 14 Car. 2. c. 11. Sect. 6.

Carman, or other Person, assisting in taking up, landing, shipping, or carrying away any Goods, &c. without a Warrant, or in the Presence of one or more Officers of the Customs. Stat. 13 & 14 Car. 2. c. 11. Sect. 7.

Two Witnesses.

Per-

Carrier.

To be divided, one Third to the King, one to the Prosecutor, and the other to the City, Borough, Town, or Lord of the Liberty where the Offence is committed.

And to the Party grieved, twice so much as he impairs.

Forfeit the same, or the Value.

To be divided in Thirds, one to the Seizor, another to the Chamber of London, the Third to the Poor.

Six Shillings and eight Pence a Hide or Skin, and the Value of every such Hide or Skin, to be divided in London, *ut supra*.

Six Shillings and eight Pence for every Hide or Skin he cutteth during the Time.

To be divided, *ut supra*.

Ten Shillings for every Hide or Piece not curried.

The Wares, and the just Value, to be divided in Thirds in London, *ut supra*.

Penalties.

To be committed till the next Quarter-Sessions, and fined then, not exceeding 100 Pounds, and to remain in Prison till discharged by Order of Exchequer, or discover who set them on Work.

First Offence, To be committed, till he find Sureties for the Good Behaviour, or be discharged by the Lord Treasurer, Chancellor, Under-Treasurer, or Barons of the Exchequer.

Second Offence, To be committed for Two Months, or till he pay 5 Pounds to the Sheriff, for the King's Use, or be discharged by the Lord Treasurer, &c.

Being

APPENDIX

Offences.

Custom-house Officers.

Penalties.

Persons armed with Clubs, or any Manner of Weapon, tumultuously assembled in the Day or Night, to the Number of Eight or more, their Aiders and Assistants forcibly hindring, wounding or beating *Custom-house Officers* in the due Execution of their Office. Stat. 6 Geo. c. 21. Sect. 33.

Being convicted, shall by Order of Court be transported for such Term as the Court shall think fit, not exceeding seven Years, in the same Manner as Felons are by 4 Geo. c. 11.

Such Offender returning into *Great Britain* or *Ireland*, before the Expiration of the said Term. Stat. 6 Geo. c. 21. Sect. 34.

Felony, without Benefit of Clergy.

Cyder-maker. Vide Title Excise.

Offences.

Deer.

Penalties.

[One] Persons, coursing, killing, hunting or taking away *Red* or *Fallow Deer*, in any Ground where Deer are kept, without Consent of the Owner, or Persons chiefly intrusted therewith; or are aiding therein. Stat. 13 Car. 2. c. 10. Sect. 2.

20*l.* to be levied by Distress and Sale; for Want of Distress, to be committed to the House of Correction for Six Months, or to the common Gaol for a Year, not to be discharged but upon Security for the Good Behaviour for a Year, after Enlargement.

Confession, or one Witness.

Prosecution within Six Months.

Persons unlawfully coursing, hunting, taking in Toils, killing, wounding, or taking away any *Red* or *Fallow Deer*, in any Forest, &c. without the Consent of the Owner, or be aiding therein. Stat. 3 & 4 W. & M. c. 10. Sect. 2.

Twenty Pounds for the Offence of Hunting, &c.

And for every Deer taken or killed 30*l.* to be levied by Distress and Sale.

One Third to the Informer, the other to the Poor, and the Rest to the Owner.

For Want of Distress 12 Months Imprisonment, and to be set in the Pillory for an Hour, in some Market-Town next to the Place.

Confession, or Oath of one Witness.
Prosecution to be in Twelve Months; and where the Offence is committed, or Party apprehended.

To grant a Warrant to Constables, Headboroughs and Tithing-men, when Deer are stolen, to search as for stolen Goods. Stat. 3 & 4 W. & M. c. 10. Sect. 3.

If upon Search any Venison, or Skins of Deer, or Toils be found, and the Persons can give no good Account how they came by them, nor in some convenient Time produce the Person of whom they bought them, or prove such Sale upon Oath. Stat. 3 & 4 W. & M. c. 10. Sect. 3.

The same Penalties with the Deer-Stealer. And to be levied and employed, *ut supra*.

Confession, or Oath of one Witness.

Persons in the Night-time, pulling down or destroying the Pales or Walls of any Park, Forest, &c. or other Ground inclosed, where *Red* or *Fallow Deer* shall be kept. Stat. 3 & 4 W. & M. c. 10. Sect. 9.

Three Months Imprisonment.

Oath of one Witness.

APPENDIX

Offences.

[Du. Sess.] Unlawfully entering into any Park, Woods, or other Grounds enclosed, and there killing or chasing the Deer. Stat. 5 Eliz. c. 21. Sect. 7.

Deer.

Penalties.

Three Months Imprisonment, to be bound to the Good Behaviour for Seven Years. Treble Damages to the Party grieved. Upon the Offender's Acknowledgment in Sessions, and Satisfaction to the Party, the Behaviour may be released.

Vide Title Deer, &c. in Title Game.

Offences.

[One] Keepers or other Officers of any Forest, Chase, Purlieu, Pad-dock, Wood, Park, or Place where Deer are usually kept, convicted of Killing or Taking away any Red or Fallow Deer, or being aiding therein without the Consent of the Owner, or Person chiefly intrusted with the Custody of such Forests, &c. Stat. 5 Geo. c. 15. Sect. 5.

Deer-Stralers.

Penalties.

50*l.* for each Deer. To be levied by Distress, and distributed as Forfeitures are, by 3 & 4 W. & M. c. 10. For Want of Distress Three Years Imprisonment, without Bail or Mainprize, and to be set in the Pillory for Two Hours on the Market-Day.

Persons pulling down, or destroying, or causing to be pulled down or destroyed, the Pales or Walls of any Park, Forest, &c. where Red or Fallow Deer shall be then kept without Owner's Consent.

Subject to the like Forfeitures and Penalties as for killing Deer.

One Witness. Stat. 5 Geo. c. 15. Sect. 6.

May on Confirmation of any Conviction of Deer-stealing, by Superior Courts at Westminster, and Delivery of the Rule, proceed against the Party convicted in the same Manner as if a *Procedendo* had been granted. Stat. 5 Geo. c. 15. Sect. 2.

Convicts before discharged, to be bound to the Person offended in 50 Pounds for their Good Behaviour, and not to offend in like Manner, and on Failure or Refusal, to be committed to the County-Gaol till so bound. And if afterwards convicted on the Stat. 3 & 4 W. & M. c. 10. The Penalty of the Bond is forfeited, to be recovered with full Costs of Suit, in any of the Courts at Westminster, and likewise liable to the Penalties and Forfeitures in the said Statute. Stat. 5 Geo. c. 15. Sect. 4.

Penalty to be distributed in the same Manner as Forfeitures are by 3 & 4 W. & M.

No Certiorari for removing Convictions of Deer-stealing, or other Proceedings upon the Stat. 3 & 4 W. & M. c. 10. to be allowed, unless he first give Securities to the Justices who convicted him in 60 Pounds for each Offence, to prosecute it, and to pay the Justice the Forfeitures due, &c. or render the Party convicted to the Justice in a Month after Conviction confirmed, or *Procedendo* granted. Stat. 5 Geo. c. 15. Sect. 1.

In Default of Rendering, &c. the Justice may proceed to execute the Conviction, as if no Certiorari had been.

[Du. Sess.] Justices of Gaol-Delivery by Order of Court to transport, for Seven Years to his Majesty's Plantations in America, Persons convicted upon Indictment of Entering Parks, &c.

APPENDIX

Offences.

Deer-Stealers.

Penalties.

Who, with armed Force, and wilfully wounding or killing Red or Fallow Deer there. Stat. 5 Geo. c. 28. Sect. 1.

Offenders punished by this Act, not punishable by any other.

Persons being armed with Swords, &c. and having their Faces blacked, or otherwise disguised, shall appear and unlawfully hunt, kill, or steal any Red or Fallow Deer, &c. being thereof lawfully convicted, shall suffer Death as a Felon. 9 Geo. c. 22. Sect. 1.

Where any Venison or Skin of a Deer shall be found in the Custody of a Person, and it shall appear the Person bought it of One who might be justly suspected to come by it unlawfully, and he doth not produce the Party of whom he bought it, or prove on Oath his Name and Place of his Abode, then the Person who bought it shall be convicted of such, by One or more Justices.

Shall be subject to the Penalties inflicted for killing a Deer, by the Act 3 & 4 W.

Offences against the Act 3 & 4 W. shall be commenced within Three Years from the Time of the Offence, but not after. 9 Geo. c. 22. Sect. 13.

This Act is continued by 12 Geo. c. 30.

Deserters. Vide Soldiers and Mariners.

Offences.

Dissenters.

Penalties.

(Protestant.)

[One] Dissenters, refusing to make and subscribe the Declaration in 30 Car. 2. and to take the Oaths, which came in the Room of the Oaths of Allegiance and Supremacy. Stat. 1 W. & M. Sess. 1. c. 18. Sect. 12.

Vide 10 Ann. c. 2. Sect. 7 & 8.

Persons refusing the Oath when tender'd. Stat. 1 W. & M. Sess. 1. c. 18. Sect. 12.

Vide 10 Ann. c. 2. Sect. 7 & 8.

To be committed without Bail, and their Names to be certified to the Quarter-Sessions.

To enter into a Recognizance with 2 Sureties of 50 l. for their producing a Certificate under the Hands of Six of the Protestant Congregation, whereof he is one; Two Protestant Witnesses, or a Certificate under the Hands of Four Church of England Protestants, that he is a Protestant.

May require Dissenting Teachers, preaching in any Congregation in such Counties where they have not qualified themselves as the Toleration-Act directs, to take the Oath and Declaration of Allegiance and Fidelity. Stat. 10 Ann. c. 2.

[Qu. Sess.] Disturbing any Protestant Dissenting Teacher. Stat. 1 W. & M. c. 18. Two Witnesses.

Twenty Pounds.

The Acts of 10 Ann. c. 2. in Part, and 12 Ann. c. 7. excluding Dissenters from Offices, repealed by 5 Geo. c. 4. But Magistrates knowingly or willingly resorting to, or being present at Meetings in England, Wales, Berwick upon Tweed, or the Isles of Jersey or Guernsey, with the Insignia or Habits of Office, are disabled, &c. Sect. 2.

Offences.

Drunkenness.

Penalties.

[One] ONE convicted for being drunk. Stat. 4 Jac. 1. c. 5. Sect. 2. 21 Jac. 1. c. 7. Sect. 3.

Five Shillings, for the Poor, where, &c. for the First Offence, within a Week, or to be levied by Distress and Sale after 6 Days.

View,

And

APPENDIX.

Offences.

Drunkenness.

Penalties.

View, one Witness, or Confession.
The Prosecution to be within 6 Months.

And for Want of Distress, to sit in the Stocks Six Hours.

For the Second Offence, to be bound in Two Sureties in Ten Pounds to the Good Behaviour.

Alehouse-keeper convicted of Drunkenness.
Stat. 21 Jac. 1. c. 7. Sect. 4.
Conviction, *ut supra*.

Disabled to keep an Alehouse for Three Years.

Offences.

Examination.

Penalties.

[One] ONE accused of Manslaughter or Felony, who for Want of Bail is to be sent to the Gaol, must be *examined* before he send him; and the Accusers must be bound over to give Evidence, whose Information must be taken in Writing. Stat. 2 & 3 Phil. & Mar. c. 10.

Examinations must be several, and given in Writing; and if it be a large Felony, they are to be certified to the next Assizes; and if a small Felony, then to the Sessions; or the Justice may be fined by the Judge. If a Felon upon Examination confesseth the Fact, the Justice must take his Name subcrib'd to his Confession.

Offences.

Excise.

Penalties.

[One] ALL Informations, Complaints, and other Proceedings before Justices, by Virtue of the Stat. 6 Geo. c. 21. or any other Act or Acts whatsoever, relating to the Duties of Excise, or any other Duty under the Management of the Commissioners of Excise, to be entred and inrolled in *English*. Sect. 23.

[Two] Persons opposing, molesting, or obstructing the Officers of *Excise* in the due Execution of the Powers or Authorities given by the Stat. 6 Geo. c. 21. or any other Act or Acts relating to the Duties of Excise. Sect. 7.

Forfeit Ten Pounds, to be sued for, recovered and levied or mitigated by such Ways and Means and Methods, as Penalties, &c. may by any Law of Excise.

(Brandy.)

All Distillers, Makers or Sellers of, or Dealers in Brandy, Arrack, Rum, Strong-Waters, or Spirits, by Wholesale or Retail, to make true Entry in Writing of all Ware-houses, Store-houses, Rooms, Shops, Cellars, and Vaults, made Use of for keeping Brandy, &c. for Sale, at the next Excise-Office. Stat. 6 Geo. c. 21. Sect. 11.

On Penalty of forfeiting 20*l*. for every such Ware-house, &c. so made Use of without Entry.

To be sued for, recovered and levied, or mitigated, in the same Manner as any Penalty or Forfeitures may by any the Laws of Excise.

One Moiety to the King, the other to the Informer. Sect. 14.

Vide Title Brewers.

All Persons who after the 1 Aug. 1720. shall become Distillers, Makers, or Sellers of, or Dealers in Brandy, &c. to make like Entry of Ware-houses, &c. before they take into their Custody or Possession, any Brandy, &c. Stat. 6 Geo. c. 21. Sect. 12.

On the like Penalty of 20*l*. for every such Ware-house, &c. so made Use of without Entry.

To be levied, mitigated, and divided, *ut supra*.

No

On

APPENDIX.

Offences.	Excise. (Brandy.)	Penalties.
No Brandy, &c. to be brought into such Ware-house, &c. by Distillers, &c. without first giving Notice to Excise-Officer, and producing to, and leaving with him, an Authentick Certificate, that the Duties of such Brandies, &c. have been actually paid or condemned as forfeited, or was Part of the Stock of some Importer, Distiller or Maker, who paid the Duty. Stat. 6 Geo. c. 21. Sect. 13.		On Penalty of forfeiting the Brandy, &c. so brought in without Notice or Certificate, together with the Cask and Vessel.
Distiller, Maker, Seller, or Dealer in Brandy, &c. hindring or refusing Officers of Excise to enter into their Ware-houses, &c. to take an Account of Brandy, &c. or shall let, hinder or obstruct Officers in executing Powers given them by the Stat. 6 Geo. c. 21. Stat. 6 Geo. c. 21. Sect. 14.		50 <i>l.</i> for every Offence. To be sued for, levied, mitigated, and divided, <i>ut supra</i> .
No Brandy, &c. to be sold, uttered, or exposed to Sale by Wholesale or Retail, but when the same shall be in some or one of the the said Ware-houses, &c. so entred. Stat. 6 Geo. c. 21. Sect. 15.		On Penalty of 40 <i>s.</i> for every Gallon, &c. To be levied, mitigated, and divided, <i>ut supra</i> .
No Brandy, &c. exceeding a Gallon, to be removed or carried from any Part of Great Britain to another, by Land or Water, without a Permit or Certificate from one of the Officers of Excise. Stat. 6 Geo. c. 21. Sect. 17.		On Penalty of forfeiting the Brandy, &c. so removed, together with the Cask or Vessel.
<i>Note</i> , Persons who shall have in their Custody any Brandy, &c. exceeding the Quantity of 63 Gallons, are deemed Sellers of Brandy, &c. and are subject to the Survey of the Officers of Excise. Stat. 6 Geo. c. 21. Sect. 18.		
Justices residing near the Place where a Seizure of Brandy, &c. clandestinely imported, shall be made, to summon the Person in whose Custody such Brandy, &c. was found, to appear before them, and upon the Appearance or Default of such Person so summoned, may in a summary Way proceed upon, hear, examine into, determine, and give Judgment for the Condemnation of such Brandy, &c. And if it shall be found to be forfeited, to issue out their Warrant for Sale of such Brandy, &c. together with the Cask or Vessel. Stat. 6 Geo. c. 21. Sect. 20.		
Judgment of the Justices is final, and not liable to Appeal or Certiorari.		
When Brandy, &c. is seized as aforesaid, and no Claim made in 20 Days, the Officer must cause Publick Notice to be given by Proclamation the next Market-Day after the said 20 Days, of the Day and Place when and where the Justices will proceed to examine into the Cause of such Seizure, and to give Judgment for the Condemnation of such Brandy, &c. so seized.		
Judgment final, and not liable to Appeal or Certiorari. Stat. 6 Geo. c. 21. Sect. 21.		
<i>Note</i> , In both the last Cases, Justices have no Jurisdiction within the Limits of the Chief Excise-Office in London. Nor in Cases where the Seizure is made for unlawful Importation, and the whole Quantity of Brandy, &c. at any one Time for that Cause seized, doth exceed 63 Gallons. Stat. 6 Geo. c. 21. Sect. 20.		

APPENDIX.

Offences.

Excise.

Penalties.

(Brandy.)

Master and Purser of any Ship who shall suffer any Brandy, &c. or other uncustomed or prohibited Goods, to be put out of his Ship or Vessel into any Hoy, Lighter, Boat, or Bottom, to be laid on Land; Or shall suffer any Wool, Woolfells, Mortlings, Shortlings, Tarn made of Wool, Woolstocks, Fullers-Earth, fulling-Clay, or Tobacco-pipe Clay, to be put on board such Ship to be carried beyond Sea. Stat. 6 Geo. c. 21. Sect. 31.

If convicted, shall (besides the Penalties and Forfeitures to which they will be liable by any Law now in Being) suffer 6 Months Imprisonment without Bail or Mainprize.

(Brewers.)

[One] To take the Oath of two able Artifts to compute the Contents and Gauge of all Brewing-Vessels. Stat. 15 Car. 2. c. 11. Sect. 7.

[Two] Brewers not making true Entries once a Week. Stat. 12 Car. 2. c. 23 & 24. Sect. 16, 17. 1 W. & M. Sess. 1. c. 24.

One Witness, or Confession.

The Prosecution must be within three Months.

Five Pounds; and ten Pounds more, to be levied by Distress and Sale, if not redeemed in 14 Days; and for want of Distress, to be imprisoned till Satisfaction made.

The Forfeiture may be mitigated, so as it be not less than double the Duty of Excise, besides Costs and Charges.

Three Fourths to the King, and one to the Informer, after Charges deducted.

Note, The first Warrant must be returned, that there is no Distress, before a second Warrant can issue, to take the Body.

Brewers not paying within a Week, and Retailers within a Month after making their Entries. Stat. 12 Car. 2. c. 23. Sect. 17. c. 24. Sect. 31.

Prosecution and Conviction, *ut supra*.

Double the Duty, to be levied and mitigated, *ut supra*.

Brewers, Victuallers, and Distillers, refusing Gaugers to enter; and being forbid by Gaugers to sell, felling, or delivering out any Liquors, not having paid the Duty. Stat. 12 Car. 2. c. 23. Sect. 19. c. 24. Sect. 32. 1 W. & M. Sess. 1. c. 24.

Prosecution and Conviction, *ut supra*.

Five Pounds; and ten Pounds more, over and above the double Value. To be levied, mitigated, and divided, *ut supra*.

Brewers making false Entries. Stat. 12 Car. 2. c. 23. Sect. 23.

Prosecution and Conviction, *ut supra*.

Over and above the said Penalties, forfeits his Allowance for Waste and Leakage for 6 Months.

Brewer, or Retailer, without giving Notice at the next Excise-Office, setting up altering or enlarging any Tun, Fat, Back, Cooler, or Copper, and using them, or keeping any private Store-house for laying such Liquors in Cask. Stat. 15 Car. 2. c. 11. Sect. 1. 1 W. & M. Sess. 1. c. 24.

Two Witnesses.

Informations to be brought in three Months, and Notice given in a Week after Information brought.

Persons

Fifty Pounds for every Tun, &c. to be levied by Distress and Sale; and for want to be committed to the County-Gaol for 3 Months.

One Third to the King, one Third to the Poor, and one Third to the Informer. 200 Pounds by Stat. 8 W. 3. c. 19. Sect. 8.

A P P E N D I X.

Offences.

Excise.

Penalties.

(Brewers.)

Persons in whose Occupation the House, &c. is, where a concealed Tun, &c. shall be discovered. Stat. 15 Car. 2. c. 11. Sect. 1.

Prosecution and Conviction, *ut supra*.

Note, There must be an Adjudication of this specifick Forfeiture before the Justices, before a Sale for the Use of the Poor, or a Distribution amongst them.

Brewers delivering, or carrying out Ale, or Beer, to his Customers in any City, &c. before Notice, unless between three in the Morning and nine in the Evening, from March 25 to September 29, unless between 5 in the Morning and 7 in the Evening, from 29 Sept. to 25 March. Stat. 15 Car. 2. c. 11. Sect. 11.

Conviction, and Prosecution, *ut supra*.

Brewers converting small Drink into strong, by Mixture, after the Gauge taken, without Notice to a Gauger, or hiding, or concealing Drink ungauged. Stat. 15 Car. 2. c. 11. Sect. 12.

Conviction, and Prosecution, *ut supra*.

Brewers not shewing to the Gaugers all the Beer, Ale, or Worts of every Guile. Stat. 1 W. & M. Sess. 1. c. 24. Sect. 10.

Conviction, and Prosecution, *ut supra*.

Brewers or Victuallers cleansing before the whole Guile is brewed off. Stat. 7 W. 3. c. 30. Sect. 21.

Brewers or Victuallers, refusing Gauger to enter and stay in his Brew-house, to see the Guile brewed off. Stat. 7 W. 3. c. 30. Sect. 22.

Brewer or Inn-keeper, upon carrying out Drink, or after carried out, mixing any Small with Strong, upon the Dray, or in the Victualler's Cellar. Stat. 7 W. 3. c. 30. Sect. 23.

Brewer, Distiller, or any other, obstructing the Officer in searching for private Tun, Back, Cask, &c. Stat. 7 W. 3. c. 30. Sect. 27.

Brewer refusing to declare his Length. Stat. 8 & 9 W. 3. c. 18. Sect. 2.

Brewer, making any Increase, or found laid off, after the Length declared. Stat. 8 & 9 W. 3. c. 18. Sect. 2.

Brewer's Servant concerned in making such Increase. Stat. 8 & 9 W. 3. c. 18. Sect. 2.

Brewer

Fifty Pounds, to be levied and employed, *ut supra*.

Or he to be punished, *ut supra*; and also such Tun, &c. with the Beer, &c. to be seized and delivered to the Overseers of the Poor, to be sold for their Use, or distributed amongst them.

Twenty Shillings a Barrel, to be levied and employed, and the Party punished, *ut supra*.

Twenty Shillings a Barrel, to be levied and employed, and the Party punished, *ut supra*.

To have no Benefit of the *Proviso* in 15 Car. 2. touching Mis-entry, and incurs all the Penalties imposed by the former Acts.

Forty Shillings a Barrel, to be recovered and employ'd, *ut supra*.

Twenty Pounds, to be recovered, and employed, *ut supra*.

Five Pounds, to be recovered and employed, *ut supra*.

Twenty Pounds, to be recovered and employed, *ut supra*.

Twenty Shillings a Barrel, for the whole Guile; to be recovered, and employed, *ut supra*, and to be charged strong.

Five Pounds a Barrel, to be recovered and employed, *ut supra*.

Twenty Shillings, to be recovered and employed, *ut supra*.

APPENDIX.

Offences.

Excise.

Penalties.

(Brewers.)

Brewer keeping any private Pipe or Conveyance, &c. or Hole in any Tun, &c. Stat. 8 & 9 W. 3. c. 18. Sect. 4.

100 Pounds, to be recovered and employed, *ut supra.*

Brewer, or other Person obstructing the Officer in searching for such Pipes. Stat. 8 & 9 W. 3. c. 18. Sect. 6.

50 Pounds, to be recovered and employed, *ut supra.*

Brewers carrying out, and delivering any Wash, Tilts, &c. to any Distiller, or Vinegar-Maker without Notice. Stat. 8 & 9 W. 3. c. 18. Sect. 9.

Twenty Shillings a Barrel, to be recovered and employed, *ut supra.*

Brewer, Inn-keeper, &c. using or mixing any Sugar, Honey, foreign Grains, Guinea Pepper, *Essentia Bina*, *Coculus India*, or any other unwholesome Ingredients in brewing Beer, or Ale, &c. Stat. 1 Ann. Sess. 2. c. 3. Sect. 29.

Twenty Pounds, to be recovered and disposed, *ut supra.*

Brewers who conspire to sell their Drink but at certain Prices. *Vide Title Conspiracies.*

Cyder-Makers.

[Two] Makers of Cyder concealing it. Stat. 7 W. 3. c. 30. Sect. 16.

40s. a Hoghead, and so proportionably, to be levied and employed, *ut supra.*

Makers of Cyder, &c. refusing Gauger to enter and take Account. Stat. 7 W. 3. c. 30. Sect. 16.

Fifteen Pounds, to be levied and employed, *ut supra.*

Makers of Cyder delivering any Wash, or Cyder to any Distiller, or Vinegar-Maker, without Notice. Stat. 8 & 9 W. 3. c. 18. Sect. 9.

Twenty Shillings a Barrel, to be recovered and employed, *ut supra.*

Distillers.

[One] Persons making or keeping any Wash, Cyder, or other Materials fit for Distillation; and having in his or their Possession or Occupation any Still, or Stills, containing 20 Gallons or upwards, shall be deemed a Common Distiller. Stat. 8 & 9 W. 3. c. 18. Sect. 11.

Liable to the several Rates and Duties of Excise, and subject to the Penalties and Forfeitures of this and all other Acts in Force.

Conviction upon the Oath of one or more credible Witnesses.

When any Person is suspected to conceal any Still, Back, or other Vessels, Spirits, Low-Wines, or other Materials for Distillation. Stat. 10 & 11 W. 3. c. 4. Sect. 7.

Upon an Affidavit declaring the Grounds of such Suspicion, to grant a Warrant to search for, and seize such Still, &c. And if not claimed by the Owner in 20 Days, to be sold by the Commissioners of Excise.

[Two] Distillers of Low-Wines, removing them after Account taken by the Gauger without drawing them off a second Time. Stat. 1 W. & M. Sess. 1. c. 24. Sect. 3.

Five Shillings a Gallon, to be levied by Distress and Sale.

Conviction by two Witnesses.

Prosecution in three Months; Notice in a Week, as against Brewers: And so for all other Offences.

Distillers

Double

APPENDIX

Offences.	Excise. (Distillers.)	Penalties.
Distillers, on Request of a Gauger in the Day-time, or in the Night, in Presence of a Constable, refusing to permit Gauger to enter his Dwelling-house. Stat. 1 W. & M. Sess. 1. c. 24. Sect. 9.		Double the Value, and Five Pounds and Ten Pounds, and no Need of proving Sale, &c. before Duty paid, &c. to be levied and employed, <i>ut supra</i> .
Conviction, <i>ut supra</i> .		
To hear and determine Complaints of Overcharges upon Oath, or other due Proof. Stat. 1 W. & M. Sess. 1. c. 24. Sect. 13.		
Distillers setting up, making use of, or altering any Tun, Cask, &c. for the Brewing, or making any Wash, Low-Wines, or Spirits for Sale; or making use of any private Ware-house, Cellar, or other Place for laying any Wash, &c. without first giving Notice at the next Office of Excise: And the Persons in whose Occupation such Tun, &c. shall be found. Stat. 3 & 4 W. & M. c. 15. Sect. 1.		Twenty Pounds, to be levied, <i>ut supra</i> . One Moiety to the King, the other to the Informer.
Distillers hiding, concealing, or conveying any Low-Wines, Spirits, or Strong-Waters, from the Sight of the Gauger. Stat. 3 & 4 W. & M. c. 15. Sect. 2.		Five Shillings a Gallon. To be recovered, as by 12 & 15 Car. 2. and employed, <i>ut supra</i> .
Distillers preparing any Wash, or, other Material, before he has drawn off all the Liquors made from Corn. Stat. 7 W. 3. c. 30. Sect. 8.		Five Pounds a Barrel, to be levied, <i>ut supra</i> . One Moiety to the King, the other to the Informer.
Distillers refusing Gaugers to stay in the Still-house, to see the Stills wrought off, &c. Stat. 7 W. 3. c. 30. Sect. 12.		Twenty Pounds, to be levied and employed, <i>ut supra</i> .
Distillers carrying out Spirits, or working Stills, at other Hours than from Michaelmas to Lady-Day, between 5 in the Morning and 8 at Night; and from Lady-Day to Michaelmas between 3 in the Morning and 9 at Night. Stat. 7 W. 3. c. 30. Sect. 15.		Ten Pounds, to be levied and employed, <i>ut supra</i> .
Distiller, or any other, obstructing the Officer in Searching for private Tun, Back, Cask, &c. Stat. 7 W. 3. c. 30. Sect. 27.		Twenty Pounds, to be recovered and employed, <i>ut supra</i> .
Distiller keeping any private Pipe, Hole, or other Conveyance, &c. from one Vessel to another. Stat. 10 & 11 W. 3. c. 4. Sect. 3.		One hundred Pounds, to be recovered and disposed, <i>ut supra</i> .
Distiller, or other Person, obstructing the Officer in Searching for private Pipe, &c. Stat. 10 & 11 W. 3. c. 4. Sect. 5.		One hundred Pounds, to be recovered and disposed, <i>ut supra</i> .
Distiller keeping any private Still, or other Vessel, he or other hindering the Officer in Searching for the same; and Person in whose Custody such Still or Vessel shall be found. Stat. 10 & 11 W. 3. c. 4. Sect. 7.		Two hundred Pounds, to be recovered and disposed, <i>ut supra</i> .

(Gaugers.)

A P P E N D I X.

Offences.

Excise.

Penalties.

(Gaugers.)

[Two] Gaugers who do not weekly deliver to Brewers a true Copy, under their Hands, of the Return he charges them with. Stat. 15 Car. 2. c. 11. Sect. 5.

Two Witnesses.

Informations to be brought in 3 Months, and Notice given in a Week after Information brought.

Gauger taking a Bribe to make a false Return, and the Party who gives the Bribe. Stat. 15 Car. 2. c. 11. Sect. 16.

Gaugers not leaving Notes with Brewers of the last Gauges. Stat. 1 W. & M. Sess. 1. c. 24. Sect. 12.

40s. for every Neglect, to be levied by Distress and Sale; and for Want, to be committed to the County-Gaol for 3 Months.

One Third to the King, one Third to the Poor, one Third to the Informer.

Ten Pounds for every Offence, to be levied and employed, or the Party punished, *ut supra*.

Forty Shillings, to be levied, *ut supra*.

To adjudge what Satisfaction the Gaugers and Officers of the Excise shall make, where any Door or House is broken open, and no private or concealed Back, Still, or other Vessel, Spirits, Low-Wines, Wash, or other Materials for Distillation shall be found. Stat. 10 & 11 W. 3. c. 4. Sect. 8. Quorum 1.

(Makers of Mead, Vinegar, Metheglin, and Sweets.)

[Two] Makers of Vinegar, Mead, Metheglin, or Sweets for Sale, concealing them. Stat. 7 W. 3. c. 30. Sect. 16.

Forty Shillings for every Barrel of Vinegar or Sweets so hid, and so proportionably. And Five Shillings for every Gallon of Mead or Metheglin.

To be levied, *ut supra*.

One Moiety to the King, the other to the Informer.

Makers of Vinegar, &c. refusing Gauger to enter and take Account. Stat. 7 W. 3. c. 30. Sect. 17.

15 l. to be levied and employed, *ut supra*.

Makers of Vinegar and Sweets, carrying them out without Notice, at other Hours than from Michaelmas to Lady-day, between Five in the Morning and Eight at Night; and from Lady-day to Michaelmas between Three in the Morning and Nine at Night. Stat. 7 W. 3. c. 30. Sect. 18.

40 s. a Barrel, to be recovered and employed, *ut supra*.

Sweet-makers setting up, or using any private Steeping-Tub, Tun, &c. without Notice, &c. Stat. 8 W. 3. c. 21. Sect. 12.

50 l. to be recovered and employed, *ut supra*.

Vinegar-makers receiving Liquors in, or delivering Vinegar out at other Hours than from 29 Septemb. to 25 March, between 7 in the Morning and 5 in the Evening; and from 25 March to 29 Septemb. between 5 in the Morning and 7 in the Evening. Stat. 10 & 11 W. 3. c. 21. Sect. 12.

50 l. to be recovered and disposed, *ut supra*.

Vinegar-maker, taking in Liquors, and mixing them with other Liquors, before he shews them to the Gauger. Stat. 10 & 11 W. 3. c. 21. Sect. 13.

Twenty Pounds, to be recovered and disposed, *ut supra*.

Vinegar-

5 F

Fifty

APPENDIX

Offences.

Excise.

Penalties.

(Makers of Vinegar, &c.)

Vinegar-maker keeping a private Store-house, Cellar, &c. Stat. 10 & 11 W. 3. c. 21. Sect. 14.

Fifty Pounds, to be recovered and disposed, *ut supra*.

Sweets made for Sale, for which the Duty is paid, or charged by the Excise-Officer, not to be removed from one Place to another, without Certificate under the Hand of the Officer of Excise of the Place from whence such Sweets are so to be sent or removed. The Maker who shall send or remove such Sweets, and Vintner who shall receive or take them without Certificate. Stat. 6 Geo. c. 21. Sect. 22.

Forfeit respectively 10 s. per Gallon, together with the Casks and Vessels containing the same.

To be seized by Officers of Excise.

The Judgment is final, and liable to no Appeal or Certiorari.

And to be proceeded upon, heard, examined into, adjudged and determined by the same Ways and Means, and in the same Manner and Form as is prescribed to be done upon Seizures of Brandy, &c.

Vide Title Brandy and Brewers, antea.

Note. Justices have no Jurisdiction within the Limits of the chief Office of Excise in London. Stat. 6 Geo. c. 21. Sect. 22.

(Inn-keeper or Victualler.)

[Two] Inn-keepers, not making true Entries once a Month. Stat. 12 Car. 2. c. 16, 23 and 24. Sect. 30. 1 W. & Mar. Sect. 1. c. 24.

Five Pounds, and Five Pounds more, to be levied, mitigated, and divided in the same Manner as the Penalty on Brewers, not making true Entries once a Week.

One Witness, or Confession.

Vide Brewers antea.

The Prosecution must be within 3 Months.

Inn-keeper or Victualler refusing Gauger to enter their Cellars and taste the Drink. Stat. 7 W. 3. c. 30. Sect. 23.

Five Pounds, to be levied by Distress and Sale. One Moiety to the King, the other to the Informer.

(Low-Wines.)

[Two] Low-Wines or Spirits brought by Sea coastwise from any Port or Place in this Kingdom to another, without a Certificate from the Officer of Excise; that the Duty has been paid. Stat. 3 Geo. c. 4. Sect. 17.

Forfeited, and may be seized by the Officers of the Customs of Excise.

To be sued for, recovered, determined, and mitigated, as Penalties may by any the Laws of Excise.

One Moiety to the King, the other to the Person that shall sue or inform.

(Malt.)

[Two] Malster or Maker of Malt for Sale, or Exportation, who shall cause, or permit any Barley, or other Corn or Grain making into Malt, to be steeped, wetted, or watered, upon the Couch or Floor, or in any other Place, but in Cisterns or Uting-Vats duly entred at the Office of Excise of the Division or Place where such Malt shall be wetted. Stat. 6 Geo. c. 21. Sect. 1.

Forfeits 2 s. 6 d. for every Bushel of Malt so steeped, wetted, or watered.

To be sued for, recover'd, and levied or mitigated, by such Ways, and Means and Methods as Penalties or Forfeitures may by any Laws of Excise. Sect. 9.

Malster, or Maker of Malt for Sale, or Exportation, who shall cause, or permit any Corn or Grain by him making into Malt, to be worked or made in such Manner, that the same shall acrespire, that is to say, run out, grow, or sprout at that End of the

Forfeits 5 s. for every Bushel. To be recovered, levied, or mitigated, *ut supra*.

Corn

On

A P P E N D I X

Offences.	Excise. (Malt.)	Penalties.
Corn or Grain from which the Blade proceeds. Stat. 6 Geo. c. 22. Sect. 2.		
Excise-Officer discovering such acrespired Corn, or Grain making into Malt, to give Notice thereof in Writing within 48 Hours to the Maltster, or Maker of such Malt, or his Servant. Stat. 6 Geo. c. 21. Sect. 3.		On Penalty of 40 s. for every Neglect of such Notice, <i>ut supra</i> .
Person or Persons shipping, or who shall cause, or procure to be shipped, Malt mix'd with unmalted Oats or Barley. Stat. 6 Geo. c. 21. Sect. 4.		Forfeits 5 s. for every Bushel, <i>ut supra</i> .
Exporter of Malt to give 48 Hours Notice in Writing to the Officer of Excise, of the Day and Hour when Malt intended to be shipped, or put on Board for Exportation, shall begin to be put on Board. Stat. 6 Geo. c. 21. Sect. 6.		5 s. for every Bushel of Malt, shipped or put on Board without Notice, <i>ut supra</i> .
Every Maltster or Maker of Malt (other than Compounder for the Duty on Malt) where Corn in any Cistern or Uting-Vat is steeping, or steeped, in Order to be made into Malt, shall be found, so hard, close, and compact, as it could not be, unless it had been forced together, to prevent the Rising and Swelling thereof. Stat. 6 Geo. c. 21. Sect. 8.		2 s. 6 d. for every Bushel of such Corn steeping or steeped, which shall be found so hard, close, and compact, <i>ut supra</i> .
[Du. Sess.] Upon Appeals against original Judgments, given by particular Justices, upon Information for Offences committed contrary to the Acts relating to the Duties upon Malt, the Duties upon Hides, &c. and upon Vellum and Parchment, to rehear, examine, and consider the Truth and Merits of the Facts in Question, and to re-examine the Witnesses upon Oath, and finally determine; and may rectify and amend Defects of Form in Proceedings before the Justices, who gave such Original Judgments. Stat. 6 Geo. c. 21. Sect. 10.		
(Retailers of Beer, Ale, Cyder, Perry, Metheglin, &c.)		
[Two] Retailers of Beer, Ale, Cyder, Perry, Metheglin, or Strong-Waters, not making true Entries once a Month. Stat. 12 Car. 2. c. 23. Sect. 15. c. 24. Sect. 29. 1 W. & M. Sess. 1. c. 24.		20 s. and 20 s. more, to be levied, mitigated, and divided in the same Manner as the Penalty on Brewers, not making true Entries once a Month.
One Witness, or Confession.		Vide <i>Brewers</i> antea.
The Prosecution must be within Three Months.		
Retailers of Beer, &c. after Receipt from Brewer, mixing Beer, &c. of extraordinary Strength, with any Small Beer, &c. in a Vessel that holds Three Gallons, or more. Stat. 22 & 23 Car. 2. c. 5. Sect. 11.		Double the Duty of Strong so mixed; to be levied by Distress and Sale. One Third to the King; one Third to the Poor; and one Third to the Informer.
Witnesses refusing to appear. Stat. 22 & 23 Car. 2. c. 5. Sect. 11.		40 s. to be levied and disposed, <i>ut supra</i> . Increased to 10 l. by 7 & 8 W. 3. c. 30. Sect. 19.
		Fairg.

APPENDIX.

Offences.

Fairs.

Penalties.

[Du. Sess.] **O**wner of a Fair or Market, not appointing a *Toll-taker* (where Toll is taken) or a *Book-keeper* (where Toll is paid) to sit there from 10 of the Clock in the Forenoon, till Sun-set. Stat. 2 & 3 P. & M. c. 7. Sect. 2.

40 s. for every Default, to be divided between the King and Prosecutor.

The Toll-taker or Book-keeper not delivering, in one Day after, unto the Owner, a Note of all *Horses* sold there. Stat. 2 & 3 P. & M. c. 7. Sect. 2.

40 s. to be divided, *ut supra*.

Every Seller or Exchanger of an Horse, in a Fair or Market, which being unknown to the Toll-taker or Book-keeper, doth not procure one credible Witness, that is well known unto him, to vouch the same Sale of the same Horse, and every false Voucher; and the Toll-taker or Book-keeper who suffers such Sale or Exchange to pass. Stat. 31 Eliz. c. 12. Sect. 2.

Five Pounds, to be divided between the Queen and the Prosecutor; and the Sale void.

Offences.

False Tokens.

Penalties.

[Two] **T**O convene by Process, or otherwise, Persons suspected to have gotten Money or other Thing by False Tokens, or counterfeit Letter. Stat. 33 H. 8. c. 1. Sect. 3. *Quorum* 1.

To commit or bail till Assizes or Sessions, or otherwise to order them at their Discretion.

[Du. Sess.] Persons obtaining any Money, or other Thing, by Colour of any False Token, or counterfeit Letters. Stat. 33 H. 8. c. 1. Sect. 2. Confession, or Witnesses.

To suffer such Punishment as the Court shall adjudge, Death only excepted.

Offences.

Sellers of Oak-Trees.

Penalties.

[Du. Sess.] **S**ellers of Oak-Trees apt for Barking, where Bark is worth 2 s. a Cart-Load (except Timber for Repair of Houses, Ships and Mills) but only between the first of April and the last of June. Stat. 1 Jac. 1. c. 22. Sect. 20.

Forfeit the Trees, or the double Value of them, to be divided, one Third to the King, one to the Prosecution, and the other to the City, Borough, Town, or Lord of the Liberty, where the Offence is committed.

Felons. Vide Title Transportation.

Offences.

Felony.

Penalties.

[One] **I**F any Person after the first of March, 1721. shall forge or counterfeit, or procure to be forged or counterfeited, or knowingly and wilfully act or assist

Felony without Benefit of Clergy.

APPENDIX

Offences.

list in the Forging or Counterfeiting any Letter of Attorney, or other Authority or Instrument to transfer, assign, sell or convey any Share or Shares of any Proprietor of the Shares of and in the Capital Stock and Funds of any *Body or Bodies Politick or Corporate*, established by Act of Parliament; or shall receive any Annuity or Dividend attending the said Shares; or counterfeit the Name of any Proprietor of any such Share, &c. or falsely and deceitfully personate any true Proprietor of such Shares, &c. or who shall receive or endeavour to receive the Money of such Proprietor, as if he was the true Proprietor. Stat. 8 Geo. c. 22. Sect. 1.

Felony.

Penalties.

Offences.

ALL Fines set by Virtue of the Stat. 7 Jac. 1. c. 4. are to be paid to the Treasurer of the County, and by him accounted for. Stat. 7 Jac. 1. c. 4.

Fines.

Penalties.

Offences.

[Two] Church-wardens of every Parish, within the *Weekly Bills of Mortality*, not making, placing, fixing, and continuing Stop-blocks or Fire-cocks on Mains and Pipes, and not having and keeping in Repair a large Engine, Hand-Engine, and Leather-Pipe and Socket. Stat. 6 Ann. c. 31. Sect. 1.

Church-warden, where Fire happens, not paying to the Turn-Cock, whose Water shall be found on, or first come into the Main or Pipe, Ten Shillings. Stat. 6 Ann. c. 31. Sect. 1.

Church-warden, where Fire happens, not paying to the first Engine-keeper, who brings in a Parish-Engine, 30s. to the Second 20s. and to the Third 10s. Stat. 6 Ann. c. 31. Sect. 1.

Menial, or other Servants, firing any Dwelling-house or Out-house, through Negligence or Carelessness. Stat. 6 Ann. c. 31. Sect. 3.

The Owner, or Head-builder or Workman, who shall build any new House without a Parry-Wall between House and House, wholly of Brick and Stone; and Two Bricks thick in the Cellar and Ground-Stories; and if

Fire.

Penalties.

Ten Pounds, to be levied by Distress and Sale.

One Moiety to the Informer, the other to the Poor of the Parish.

Ten Shillings, to be levied by Distress and Sale.

The 30s. 20s. and 10s. to be levied by Distress and Sale.

One hundred Pounds, to be paid to the Church-wardens, to be given to Sufferers by Fire; in Case of Default, or Refusal, to be committed to the Work-house or House of Correction, to hard Labour, as the Justices shall think fit.

Fifty Pounds a-piece, to be levied by Distress and Sale; and for Want of Distress to be imprisoned till Payment.

One Moiety to the Informer, the other to the Poor.

APPENDIX

Offences.

if it be not 13 Inches thick upwards, and 18 Inches above the Roof: And if any Mundilion, or Cornish of Timber or Wood, under the Eaves, shall be made, or suffer'd in any such new House and Houses; and if all Front and Rear Walls of every House and Houses, shall not be built of Brick or Stone, to be carried a Foot and half above the Garret and Floor, and coped with Stone or Brick. Stat. 6 Ann. c. 31. Sect. 4.

Fire.

Actions against Persons where the Fire accidentally begins, taken away for Three Years.

Penalties.

After the 24 June, 1725. all Persons who shall erect any House on an old or new Foundation, in London or Westminster, or the Weekly Bills of Mortality, or in Mary le Bone and Paddington; in the Parishes of Chelsea and St. Pancras (except Houses on London-Bridge, and on the Thames below Bridge) and who shall think it necessary to pull down any Partition-Wall between that and the adjoining House, shall (if the Owner of the adjoining House will not agree) give Three Months Notice in Writing of their Intention, that before the Party-Wall be pull'd down, it may in a Month after Notice be viewed by Four able Workmen, Two to be nam'd by the first Builder, and Two by the Owner of the next House; and if either Party shall not name, in Three Weeks, such Workmen, then the other shall name Four to view the Party-Wall; and without Consent the same shall not be pulled down, unless in the said Cases; and the major Part of the Workmen shall certify to the Quarter-Sessions, that the Party-Wall is defective; and if any Person shall think himself aggrieved by such Certificate, the Justices are to summon before them, one or more of the Workmen, and such others as they think fit, and examine them on Oath, and thereon the Justices are to make Orders in the Premises, which shall be conclusive to all Parties without Appeal.

If within Three Days after such Certificate, and there be no Appeal from the same, and the Owner of the next House shall not shore and support it in Six Days after the Time allowed for Appeal, then the first Builder may shore and support the same at the Charges of the Owner, and build up a new Party-Wall; and in Ten Days after the Party-Wall shall be built, he shall leave with the Owner of the next House, an Account of the Rods in the Party-Wall; and one half Part of the Expence, at 5*l.* per Rod, shall be paid by such Owner; and the Tenant shall pay to the first Builder for the same, and for shoring, and deduct it out of the next Rent; and the first Builder, if not paid in 21 Days after Demand, may sue for his Proportion of the Expence.

It shall not be lawful to have in any Party-Wall, which shall be erected in the said Limits, any Door-case, Window, Lintel, Breast-summer, or Story-Posts or Plates, unless where Two or more Houses shall be laid together, and used as one House, during such Usage, on Forfeiture of 50*l.* but such Door-case, Window, &c. may be affixed in the Front for Conveniency of Shops only.

First Builder, giving Three Months Notice, may pull down the old Timber-Walls or Partitions, and build a new Brick Party-Wall, and be paid for the same as afore directed, and subject to such Appeal, &c.

The Water falling from the Tops of the Houses built after 24 June, 1725. in the said Limits, and Water falling from Balconies and Penthouses, shall be conveyed into the Channels by Party-Pipes, on the Sides of the Houses, on Forfeiture of 10*l.*

All Penalties imposed by this Act shall be sued for in Manner before-mentioned, and one Moiety shall be to the Informer, and the other to the Poor of the Parish.

Where Houses are built on new Foundations, no second Builder shall take Benefit of such Party-Wall and Fence-Wall, nor lay any Timber, or cut any Hole for Cup-boards, Presses, or other Uses in the Party-Wall, on Forfeiture of 50*l.*

Builders not having built their Houses according to the Directions of the Act 6 Anna, for the better regulating Buildings, &c. who shall before the 29 September 1727, make good the Defects, and pay to the Informers their Costs of Suit, which shall have been commenced (upon which no Conviction shall be obtain'd before 10 May, 1725.) to be settled by Three or more Justices, shall not be liable to the Penalties of the said Act; but if such Builder shall not make good such Defects, and pay the Costs so settled, he shall forfeit double the Penalty in the Act; and all Builders convicted before the said 10 May, who shall

APPENDIX

Offences.

Fire.

Penalties.

shall not make good the Defects before the Time before limited, shall, notwithstanding such Conviction, be further liable to the Penalties of the said Acts, to be recovered as by the said Acts are directed; but if the present Owners shall deny the first Builders, within the limited Time, on Thirty Days Notice, to enter upon the Premises, and bring Materials to make good the Defects; then on Oath before Two or more Justices of such Denial, the first Builder shall be discharged from the Penalties, and the present Owner shall be liable to pay the same.

Whereas the Conviction for the said Forfeitures was to be only before one Justice of the Peace, after 25 of June, 1725, it shall be before Two Justices at the least. 11 Geo. c.

Offences.

Fish.

Penalties.

[One] E Rectors of Wear or Wears along the Sea-Shore, or in any Haven or Creek, &c. wilfully destroying the Spawn or Fry of Fish. Stat. 3 Jac. 1. c. 12. Sect. 2.

Ten Pounds, to be levied by Distress, &c. and divided between the Poor and the Prosecutor.

Fishers in any Haven or Creek, or in Five Miles of them, with any Net of a less Mesh than Three Inches and an Half between Knot and Knot (except for the taking Smoulds in Norfolk only) or with a Canvas Net, or other Engine, whereby the Spawn or Fry of Fish may be destroyed. Stat. 3 Jac. 1. c. 12. Sect. 2.

The Net or Engine to be forfeited, and 10 s. to be levied, and divided, *ut supra*.

Persons taking Fish by any Device, in any several Water or River, or assisting therein, without the Owner's Consent. Stat. 22 & 23 Car. 2. c. 25. Sect. 7.

Such Recompence, and in such Time as the Justice shall appoint, not exceeding treble Damages, such Sum to the Overseers of the Poor as he shall appoint, not exceeding 10 s.

Confession, or one Witness.

Prosecution to be in a Month.

In Default, to be levied by Distress and Sale; and for Want of Distress, to be committed, not exceeding a Month, unless he gives Bond, with one or more Sureties to the Party injured, not exceeding Ten Pounds, not to offend again.

Persons keeping any Net, Angle, Leap, Piche, or other Engine for taking Fish, other than Makers and Sellers of them, and Owners or Occupiers of Rivers or Fisheries. Stat. 4 & 5 W. & M. c. 23. Sect. 5.

Such Engines may be seized, and kept by the Owners and Occupiers of such Rivers and Fisheries, or such as they shall authorize.

Inferior Tradesmen, Apprentices, and other dissolute Persons fishing or fowling, unless in Company with the Master of such Apprentice qualified by Law. Stat. 4 & 5 W. & M. c. 23. Sect. 10.

Subject to the same Penalties as Persons are where Game is found, and to be levied and employed in the same Manner.

Vide Title Deer, &c. in Title Game.

To grant his Warrant to search the Houses of Persons prohibited, and suspected to have Engines for taking Fish, and to seize or destroy the same. Stat. 4 & 5 W. & M. c. 23. Sect. 5.

By Warrant to order Nets of less Mesh or Moke than three Inches and an half, or of false or double Bottom, Cod or Pouch, forfeited, to be publicly burnt. Stat. 1 Geo. c. 18. Sect. 6.

Selling,

APPENDIX

Offences.

Fish.

Penalties.

Selling, offering, or exposing to Sale, or exchanging for any other Goods, *Bret* or *Turbor* under 16 Inches long, *Brill*, or *Pearl* 14, *Codlin* 12, *Whiting* 6, *Bass* and *Mullet* 12, *Sole*, *Plaice*, or *Dab* 8, and *Flounder* 7, from the Eyes to the utmost Extent of the Tail. Stat. 1 Geo. c. 18. Sect. 7.

Forfeit the Fish to the Poor, where, &c. and 20 Shillings by Distress.

One Moiety to the Informer, the other to the Poor, where, &c. In Default of Payment, or want of Distress, to be sent to the House of Correction to be whipt, and put to hard Labour, not longer than 14 Days, nor less than 6.

Note, Persons imprisoned by this Act not liable to pay the Penalty. Sect. 8.

No Prosecution for any Offence against the Stat. 1 Geo. c. 18. unless commenced in one Month after Committed. Sect. 9.

Laying or drawing any Kind of Nets, Engines, or Devices, in the Rivers *Severn*, *Dee*, *Wye*, *Thame*, *Ware*, *Tees*, *Ribble*, *Mersey*, *Dun*, *Air*, *Ouzze*, *Swale*, *Caldor*, *Wharf*, *Eure*, *Darwent*, and *Trent*, whereby the Spawn, or small Fry of *Salmon*, or any Kepper or Shedder-Salmons, or *Salmons* under 18 Inches long, from the Eye to the middle of the Tail, shall be taken, killed, or destroyed; or making, erecting, or setting any Bank, Dam, or Hedge, or Stank, or Nets, cross the said Rivers, to take the *Salmon*, or to hinder them from going up to spawn, or killing *Salmon* in the said Rivers, between the last of *July* and 12 *November*; or fishing for *Salmon* with unlawful Nets, after the 12th of *November*.

View, Confession, or one or more Witnesses. Stat. 1 Geo. c. 18. Sect. 14.

No *Salmon* to be sent to *London* to Fishmongers, or their Agents, that shall weigh less than 6 Pounds each Fish. And every Person buying, selling, or sending *Salmon* under 6 Pounds Weight.

View, Confession, or one or more Witnesses. Stat. 1 Geo. c. 18. Sect. 15.

Note, An Appeal lies upon any Branch of Sect. 17.

Masters, or Commanders of Smacks, Hoys, Boats, Ships, or other Vessels, importing Fish taken by Foreigners or Strangers, except Protestants inhabiting in this Kingdom; to be summoned, and if convicted.

Two Witnesses.

Stat. 1 Geo. c. 18. Sect. 2.

None to use Nets for fishing at Sea upon the Coast of *England*, (except for *Herrings*, *Pilchards*, *Sprats*, or *Lavidnian*) with a Mesh or Moke less than three Inches and a half, from Knot to Knot, or with any false or double Bottom, Cod, or Pouch, or shall put Nets of legal Size or Mesh, upon or behind one another. Stat. 1 Geo. c. 18. Sect. 4.

Five Pounds for every Offence, besides the Fish taken, and all Nets, &c.

One Moiety of the said Sum to the Informer, the other to the Poor where, &c. to be levied by Distress and Sale, &c.

And for want of Distress, Commitment to the House of Correction to hard Labour, not exceeding three, nor less than one Month. And to suffer such other corporal Punishment, as the Justice shall think fit.

Nets, &c. to be seized and cut to Pieces in the Presence of the Justice.

To cause Banks, Dams, &c. to be demolished at the Charge of Offenders, and such Charges to be levied, *at supra*.

Five Pounds for every Offence, besides the Fish, between Informer and Poor, to be levied, *at supra*.

And for want of Distress, Commitment to the House of Correction to hard Labour for three Months, unless paid in the mean Time.

the Statute. 1 Geo. c. 18, to Quarter-Sessions.

Forfeits for every Offence 20 Pounds by Distress, and for want thereof, 12 Months Imprisonment.

Not to extend to the Importing, Buying, or Selling any *Eels*, *Stockfish*, *Anchovies*, *Sturgeon*, *Borarge*, or *Cavear*. Sect. 3.

Or *Lobsters* and *Turbors*. Sect. 10.

Liable to the same Penalties as Masters of Vessels importing Fish contrary to this Act, and the Nets forfeited.

APPENDIX.

Offences.	Fish.	Penalties.
[Two] To issue out Warrants upon their own Knowledge, or upon Information, of unlawful fishing in the River <i>Severn</i> , to search all suspected Places for unlawful Instruments, and to seize them, and bring them to the Quarter-Sessions to be destroyed. Stat. 30. Car. 2. c. 9. Sect. 3.		
[Qu. Sess.] Using any Net or Engine to destroy the Spawn or Fry of Fish, or take Salmon or Trouts out of Season, or Pikes shorter than 10 Inches, Salmon than 16, Trouts than 8, and Barbels than 12, or using any Engine to take Fish, other than Angle or Net, or a Trammel of 2 Inches and a half Mesh. Stat. 1 Eliz. c. 17. Sect. 5.		Twenty Shillings a Fish, and the Net, or Engine.
Unlawfully breaking down Fish-Ponds, or fishing there without the Owners Licence. Stat. 5 Eliz. c. 21. Sect. 7.		Three Months Imprisonment, and to be bound to the Good Behaviour for 7 Years. Treble Damages to the Party grieved. Upon the Offender's Acknowledgment in Sessions, and Satisfaction to the Party, the Behaviour may be released.
Fishing in the River <i>Severn</i> with, or making use of any Engine or Device, whereby any Salmon, Trout, or Barbel, under the Length appointed by 1 Eliz. c. 17. shall be taken or killed, or shall fish with any Net, for Salmon, Peale, Pike, Carp, Trout, Barbel, Chub, or Grayling, the Mesh whereof shall be under 2 Inches and an half square from Knot to Knot, or above 20 Yards in Length, and 2 in Breadth; or above 50 Yards in Length, and 6 in Breadth in the Wing of the Net, from <i>Ripple-Lock</i> Stake to <i>Gloucester</i> Bridge, or above 60 Yards in Length below <i>Gloucester</i> Bridge, and 6 Yards in Breadth in the Wing of the Net, or shall fish with more than one of those Nets at once, or shall use any Device for taking the Fry of Eels. Stat. 30 Car. 2. c. 9. Sect. 1.		Five Pounds for every Offence, and the Fish so taken, and the Instruments. One Moiety to the Poor, the other to the Prosecutor.
Every Person who, between the first of <i>March</i> and the last of <i>May</i> , shall do any Act whereby the Spawn of Fish shall be destroyed. Stat. 30 Car. 2. c. 9. Sect. 2.		Forty Shillings, and the Instrument, to be divided, <i>ut supra</i> .

Offences.	Flesh.	Penalties.
[Qu. Sess.] Person preaching, or otherwise avouching, or notifying, that any Eating of Flesh, or Forbearing of Flesh, is necessary for the Service of God, otherwise than as other political Laws be. Stat. 5 Eliz. c. 5. Sect. 40.		To be punished as Spreaders of false News.

Offences.	Forcible Entry and Detainer.	Penalties.
[One] Entering into Lands and Tenements by Force, and detaining them by Force. Stat. 5 R. 2. c. 7. 15 R. 2. c. 2. Sect. 2. 8 H. 6. c. 9. Sect. 1. Upon View.		Imprisonment, and Ransom at the King's Pleasure. Note, The Statute of 8 H. 6. c. 9. shall in-damage none, where peaceable Possession hath been enjoyed 3 Years. Stat. 31 Eliz. c. 11. 5 H Upon

APPENDIX.

Offences.

Forcible Entry and Detainer.

Penalties.

Upon Complaint of a *Forcible Entry* or *Detainer*, by Precept to command the *Sheriff* to return a Jury to enquire of the Force committed, and to cause the Tenements to be seized. Stat. 8 H. 6. c. 9. Sect. 4.

Jurors returned to enquire of a forcible Entry, making Default. Stat. 8 Hen. 6. c. 9. Sect. 4.

Issue 20 Shillings upon the first Precept, 40 Shillings upon the second, 5 Pounds upon the third; and every Default after, double.

To give Restitution upon *Force* or *Detainer* to Tenants for Years, by *Elegit*, Statute Merchant or Staple; and Copyholders, as well as those who claim Freehold or Inheritance: And may fine or commit. Stat. 21 Jac. 1. c. 15. By Enquiry.

[Du. Sess.] The *Sheriff* or *Bailiff* neglecting his Duty in the Case of *Forcible Entry* or *Detainer*. Stat. 8 H. 6. c. 9. Sect. 5.

Twenty Pounds, to be divided between the King and the Prosecutor.

Offences.

Forestallers and Ingrossers.

Penalties.

[Du. Sess.] Ingrossers of Bark, to the Intent to sell the same again. Stat. 1 Jac. 1. c. 22. Sect. 19.

Forfeit the Bark, or the Value of it, to be divided, one Third to the King, the other to the Prosecutor, and the other to the City, Borough, Town, or Lord of the Liberty where the Offence is committed.

Forestallers, Regrators, Ingrossers of Merchandizes, Victuals, &c. Stat. 5 & 6 Ed. 6. c. 14. Sect. 4, 5.

By Inquisition, Presentment, Bill, or Information, or two Witnesses.

Extends not to buying Barley, or Oats to make Malt or Oatmeal, nor Provision of any Town-Corporate, Ship, &c. or any Fishmonger, Innholder, Victualler, Butcher, Poulterer, or People living within a Mile of the Sea, which are to buy or sell Fish; they retailing the same at reasonable Prices. Nor to any Badger, Kidder, or Carrier, licensed by three Justices, and selling in one Month; nor to taking any Thing reserved on a Lease, so as all be done without Fraud and Forestalling; nor to restrain Transportation of Corn, or Cattle, allowed by three Justices. Nor to Wines, Oyl, &c. or other Victuals brought from beyond Sea; Fish and Salt only excepted. Stat. 13 Eliz. c. 25. Sect. 20.

First Offence, the Value of the Goods, and two Months Imprisonment, without Bail.

Second Offence, double Value, and six Months Imprisonment, without Bail.

Third Offence, all his Goods, to be set in the Pillory, and Imprisonment during the King's Pleasure.

One Moiety of the Forfeitures to the King, the other to the Prosecutor, by *Fieri fac'* or *Capias*.

If the Prosecution be at the King's Suit only, the whole to the King.

Not to be punished twice for the same Offence.

Note, A *Forestaller* is one that shall buy or contract for any Merchandize, Victual, or other Thing whatsoever, in the Way, before it shall be brought by Land or by Water, unto any City, Port, Road, Fair or Market, where it shall be sold; or shall cause the same to be so bought; or shall dissuade People from bringing any such Commodity to any such Place; or being brought, shall persuade them to enhance the Price thereof. Stat. 5, 6 Ed. 6. c. 14.

A *Regrator* is one that buys any Grain, Wine, Fish, Butter, Cheese, Candles, Tallow, Sheep, Lambs, Calves, Swine, Pigs, Geese, Capens, Hens, Chickens, Pigeons, Conies, or other dead Victual whatsoever, brought to a Fair or Market to be sold there, and does sell the same in the same Fair or Market, or in some other Fair or Market within 4 Miles. *Ibid.*

A P P E N D I X.

Offences.

Forestallers and Ingrossers.

Penalties.

An *Ingrosser* is he that gets into his Hands by Buying, Contract or Promise (other than by Demise, Grant, or Lease of Land or Tithes) any Corn growing in the Fields, or other Grain, Butter, Cheese, Fish, or other dead Victual whatsoever, with Intent to sell it again. Stat. 5, 6 Ed. 6. c. 14.

Fruit-Trees. *Vide* Orchards.

Offences.

Fuel.

Penalties.

[One] **O**ffenders against the Statute for the Affize of Fuel, if they be not able to satisfy the Forfeitures. Stat. 7 Ed. 6. c. 7. Sect. 6. 43 Eliz. c. 14. One Witness, or otherwise. Prosecution to be within a Year.

To be set upon the Pillory in the next Market-Town, on the Market-Day at 11 a-Clock, having a Billet or Faggot bound to some Part of his Body.

Where *Billet* is exposed to Sale, and not affized and marked, or cut, as is directed by Stat. 9 Ann. c. 15. Sect. 2. which see.

The Justice, upon Information, is to call before him Six good lawful Men of the Parish, &c. where the said Billet is exposed to Sale, and swear them to enquire into the Truth; and if they find the Billet not truly affized and marked, the said Justice shall deliver the same to the Overseer of the Poor, to be given to the Poor there.

This extends not to Owners or Proprietors of Trees, who make Billet for their own private Use only.

Offences.

Games not Lawful.

Penalties.

[One] **T**O enter into any common House or Place, where Playing at Dice, Tables, Cards, Bouls, Coits, Cates, Logats, Shove-groat, Tennis, casting the Stone, Foot-Ball, or other unlawful Game is suspected to be used. Stat. 33 H. 8. c. 9. Sect. 14.

The Keepers of Houses or Places where unlawful Games are used. Stat. 33 H. 8. c. 9. Sect. 14.

To be taken and imprisoned, till they find Sureties by Recognizance, no longer to keep such House or Place.

Artificers, Husbandmen, Labourers, Apprentices at Husbandry, Journeymen, or Servants of Artificers, Mariners, Fishermen, or Serving-men, playing at any unlawful Game. Stat. 33 H. 8. c. 9. Sect. 16.

To be committed without Bail, till he be bound in such Sum as the Justice shall think reasonable, not to offend again.

[Two] **T**O cause to come, or be brought before them, such Persons whom they shall have just Cause to suspect to have no visible Estate, Possession or Calling, to maintain themselves by; but do for the most Part support themselves by Gaming; and if they appear to be such. Stat. 9 Ann. c. 14. Sect. 6.

To be bound to the Good Behaviour for 12 Months: And if they cannot find Sureties, to be committed to the common Gaol, till they find Sureties.

Note, If such Person so bound to the Good Behaviour, shall afterwards at any one Time play or bet for more than 20 Shillings, it is a Breach of his Good Behaviour, and the Recognizance becomes forfeited. Sect. 7.

[Qu. Sess.] Keeping a House of unlawful Games. Stat. 33 H. 8. c. 9. Sect. 11.

Forty Shillings a Day.

Re-

Six

APPENDIX.

Offences.	Games not Lawful.	Penalties.
Resorting to, or Playing in an House of unlawful Games. Stat. 33 H. 8. c. 2. Sect. 12.		Six Shillings and eight Pence a Time.
Mayor, Sheriffs, Constables, and Head-Officers, not searching Places suspected for unlawful Gaming. Stat. 33 H. 8. c. 9. Sect. 15.		Forty Shillings.
Artificers, Apprentices, &c. <i>ut supra</i> , using unlawful Games out of Christmas Time. Stat. 33 H. 8. c. 9. Sect. 16.		Twenty Shillings.

The Statute 33 H. 8. c. 9. against unlawful Games, to be proclaimed Four Times a Year in the Market, and every Quarter-Sessions in open Sessions.

Offences.	Game.	Penalties.
	(Conies.)	
[One] Persons entering wrongfully into Ground kept for breeding Conies, tho' not inclosed; and chasing, taking or killing any against the Owner's Will. Stat. 22 & 23 Car. 2. c. 25. Sect. 4. Confession, or one Witness. Prosecution to be in a Month.		Treble Damages and Costs, and Three Months Imprisonment, and till they find Sureties for their Good Behaviour.
Persons killing or taking in the Night, Conies upon the Borders of Warrens, or on other Grounds, used for keeping Conies, except Owners. They who use Snares, Hair-pipes, and other Engines. Stat. 22 & 23 Car. 2. c. 25. Sect. 5. Conviction, <i>ut supra</i> .		Such Recompence, in such Time as the Justice shall appoint, and pay such Sum to the Overseers of the Poor, as he shall think fit, not exceeding Ten Shillings; and in Default to be committed to the House of Correction.

(Deer, Hare, Partridge and Pheasant.)

[One] Killers or Takers of Pheasants or Partridges in the Night. Stat. 23 Eliz. c. 10. Sect. 2.	Being convicted, he is to take Bond (for Two Years only) with good Sureties, not to offend in the like Kind. To examine and bind over all Offenders against the said Statute.
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To grant a Warrant to search the Houses of suspected Persons for Hare, Partridge, and other Game. Stat. 4 & 5 W. & M. c. 23. Sect. 3.

Persons where Game is found, not giving a good Account how they came by it, or not producing the Party of whom they bought it, in some convenient Time, or some credible Person, to prove such Sale upon Oath. Stat. 4 & 5 W. & M. c. 23. Sect. 3.	Not under 5s. nor exceeding 20s. for every Hare, Partridge, or other Game, to be levied by Distress and Sale; and in Default, to be committed to the House of Correction, not exceeding a Month, nor less than 10 Days, to be whipp'd and kept to hard Labour. One Moiety of the Penalties to the Informer, the other to the Poor.
Higlers, Chapmen, Carriers, Inn-keepers, Victuallers or Alehouse-keepers, having in his or their Custody or Possession, any Hare, Pheasant, Partridge, Moore, Heath-Game, or Grouse;	Five Pounds for every Hare, &c. to be levied by Distress and Sale. One Moiety to the Informer, the other to the Poor.

A P P E N D I X.

Offences.

Game.

Penalties.

(Deer, Hare, Partridge and Pheasant.)

Grouse; or shall buy, sell, or offer to sell any Hare, &c. except Carriers who carry for Persons qualified. Stat. 5 Ann. c. 14. Sect. 2. View, or one Witness. Conviction to be in Three Months.

Persons offending against 5 Ann. c. 14. having Game in Custody, and bringing a Certiorari to remove the Conviction. Stat. 5 Ann. c. 14. Sect. 2.

Note, The Stat. 5 Ann. c. 14. is made perpetual by 9 Ann. c. 25.

If any Hare, &c. shall be found in the Shop, House, or Possession of any Person not qualified in his own Right to kill Game, or intitled thereto under some Person qualified: The same shall be adjudged exposing the same to Sale. Stat. 9 Ann. c. 25. Sect. 2.

Persons taking, killing, or destroying Hare, &c. in the Night-time. Stat. 9 Ann. c. 25. Sect. 3.

Soldiers killing Hares, &c. or other Game. Vide Abstract of the Duty and Desertion Bill, at the End of this Book.

[Two] Killers or Takers of any Pheasant, Partridge, Pigeon, Duck, Heron, Hare, or other Game; and Takers or Destroyers of the Eggs of Pheasants, Partridges, or Swans. Stat. 1 Jac. 1. c. 27. Sect. 2. Confession, or Two Witnesses.

Sellers, or Buyers to sell again of Deer, Hare, Pheasant or Partridge, (except reared up or brought from beyond Sea). Stat. 1 Jac. 1. c. 27. Sect. 4.

Hawkers at, or Destroyers of Pheasants or Partridge, between the first of July and the last of August. Stat. 7 Jac. 1. c. 11. Sect. 2. Confession, or Two Witnesses. Prosecution in Six Months.

[Du. Sess.] Taking Pheasants or Partridges with Engines, in another's Ground, without License. Stat. 11 H. 7. c. 17. Sect. 2.

Killing or taking any Pheasants or Partridges with any Net or Engine, in the Night-time. Stat. 2 Eliz. c. 10. Sect. 2.

For Want of Distress, to be committed to the House of Correction for 3 Months, without Bail or Mainprize, for the first Offence, and Four Months for every other Offence.

To enter into a Recognizance for 50 l. with Sureties, conditioned to pay the Prosecutor full Costs, to be ascertained upon Oath within 14 Days after Conviction or Proceudo granted.

In Default, Justices may proceed to execute such Conviction.

Incur the same Forfeitures, Pains, and Penalties; and to be recovered, as by Stat. 5 Ann. c. 14.

Vide Abstract of the Duty and Desertion Bill.

To be committed without Bail, unless they pay to the Poor where the Offence was committed, or they apprehended, 20 s. for every Fowl, Hare or Egg.

After they have been committed a Month, to be bound with Two sufficient Sureties in 20 Pounds a-piece, not to offend again.

Deer, 40 s. Hare, 10 s. Pheasant, 20 s. Partridge, 10 s. Between the Poor and the Prosecutor.

Extends not to one licensed in open Sessions to kill Hawks-Meat; but then he must be bound in a Recognizance of 20 l. not to kill any of the same Game, nor to shoot within 200 Yards of an Heronry, within 100 Paces of a Pigeon-house, or in a Park, Forest or Chase, whereof his Master is not Owner.

One Month's Imprisonment, without Bail, unless he pays to the Poor of the Parish where the Offence was committed, 40 s. for every Time he hawked, and 20 s. for every Pheasant or Partridge, destroyed or taken.

Ten Pounds, to be divided between the Owner of the Ground and the Prosecutor.

20 s. for every Pheasant, and 10 s. for every Partridge. If not paid in 10 Days, a Month's Imprisonment without Bail.

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Offences.

Game.

Penalties.

(Deer, Hare, Partridge and Pheasant.)

The Money to be divided between the Lord and the Prosecutor; but if the Lord, &c. shall dispence with it, then his Moiety to the Poor.

(Deer-Hayes, or Buck-Stalls.)

[Two] Keepers of Deer-Hayes or Buck-Stalls, have in his own Forest or Park. Stat. 19 H. 7. c. 11. Sect. 3.

40 s. a Month, the Offender to be examined and committed till Payment. Justices to have the 10th Part.

Stalkers, with any Bush or Beast to any Deer, except in his own Forest or Park. Stat. 19 H. 7. c. 11. Sect. 4.

Ten Pounds, Proceedings against him, *ut supra*.

(Eggs of Falcon, Goshawk, Lanner or Swan.)

[Qui. Sell.] Taking out of the Nest any Eggs of Falcon, Goshawk, Lanner or Swan. Stat. 11 H. 7. c. 17. Sect. 4.

A Year and Day's Imprisonment; a Fine, one Moiety to the King, the other to the Owner of the Ground. But where they are Swans-Eggs, to the Owner of the Swans.

Vide Title Deer supra.

(Game-keeper.)

[One] Game-keepers, selling or disposing of Game without the Consent or Knowledge of the Lord. Stat. 5 Ann. c. 14. Sect. 4. One Witness.

To be committed to the House of Correction for 3 Months, to be kept to hard Labour.

No Lord or Lady of a Manor to make above one Person to be a Game-keeper within any one Manor, whose Name must be entered with the Clerk of the Peace, who is to grant a Certificate thereof. And Game-keepers, whose Names are not so entered, and not otherwise qualified, who shall kill any Hare, &c. or who shall sell or expose to Sale any Hare, &c. Stat. 9 Ann. c. 25. Sect. 1.

Incur like Forfeitures, Pains and Penalties, as are inflicted on Higlers, &c. for Buying or Selling of Game, by 5 Ann. c. 14.

Forfeitures to be recovered by such Means as are prescrib'd in the said Act 5 Ann.

Game-keepers not qualified, or not Servants to Lords of Manors, or immediately employed by them to take and kill Game for their sole Use or Benefit, killing Hare, Pheasant, &c. or keeping Greyhounds, &c. Stat. 3 Geo. c. 11. Sect. 1.

Incur the Penalties in the Acts 5 & 9 Ann.

Note, The Acts 5 & 9 Ann. and all other Laws now in Force for the better Preservation of the Game, are continued and enforced by 3 Geo. c. 11. Sect. 2.

(Greyhounds, Bows, Setting-Dogs, Ferrets and Snares.)

[One] Persons, not qualified by Law, keeping or using any Bows, Greyhounds, Setting-Dogs, Ferrets, Coney-Dogs, Hayes, Lurchers, Tumtels, Low-bells, Hare-pipes, Snares, or other Instruments for destroying of Game. Stat. 4 & 5 W. & M. c. 23. Sect. 3.

Confession, or one Witness.

Subject to the same Pains and Penalties as Offenders are liable to, on whom Game shall be found, and who do not give a good Account how they came by it; which *vide supra*, in Title Deer, &c. under Title Game.

To be levied and employed in the same Manner.

Before

A P P E N D I X

Offences.

Game.

Penalties.

(Greyhounds, Bows, Setting-Dogs, Ferrets and Snares.)

Before the Allowance of a *Certiorari*, to remove any Conviction upon the Stat. 4 & 5 W. & M. c. 23. The Party is to become bound to the Prosecutor in 50*l.* with *Sureties*, to be approved by a Justice, to pay Costs, upon Oath, in a Month after Conviction is confirmed. Stat. 4 & 5 W. & M. c. 23. Sect. 7.

Persons not qualified, keeping, or using any *Greyhounds*, *Setting-Dogs*, *Hayes*, *Lurchers*, *Tunnels*, or any other Engine, to kill and destroy the Game. Stat. 5 Ann. c. 14. Sect. 4.

One Witness.

[Two] Keepers of *Greyhound*, *Dog* or *Net*, to kill or take *Deer*, *Hare*, *Pheasant* or *Partridge*, by any who have not an Inheritance of Ten Pounds *per Ann.* or Lease for Life of 30 Pounds *per Ann.* or be worth 200 Pounds in Goods, or be Son of a Baron, or Knight, or Heir apparent of an Esquire. Stat. 1 Jac. I. c. 27. Sect. 3.

Confession, or Two Witnesses.

Persons of mean Condition, killing or taking any *Pheasant* or *Partridge*, with Dogs, Nets, or Engines. Stat. 7 Jac. I. c. 11. Sect. 8.

Confession, or one Witness.

To grant a Warrant for any Constable, or Headborough, to search the Houses of Persons suspected to have any *Setting-Dogs* or Nets. Stat. 21 Jac. I. c. 11. Sect. 9.

Five Pounds, to be levied by Distress and Sale; and for Want, to be committed to the House of Correction for Three Months, for the first Offence, and Four Months for every other Offence.

To be committed without Bail, unless they pay 40*s.* to the Poor, where the Offence was committed.

To be committed without Bail, unless he pays 20*s.* for every Pheasant and Partridge so killed, or taken; and also be bound in a Recognizance of 20*l.* never to offend again.

The Dogs to be killed, and the Nets cut in Pieces.

(Guns.)

[One] To grant his Warrant to *Game-keepers*, and others, to search the Houses of Persons prohibited to keep Guns, &c. for such Guns, &c. and to seize them for the Use of the Lord of the Manor, or destroy them. Stat. 22 & 23 Car. 2. c. 25. Sect. 2.

(Hawks.)

[Du. Sell.] Bearing any *Hawk* of *English* Breed, called a *Nyette*, *Goshawk*, *Tal-fel*, *Lanner*, *Lanneret*, or *Faulcon*. Stat. 11 H. 7. c. 17. Sect. 4.

Killing or scaring away any of the said *Hawks* from the Coverts where they used to breed. Stat. 11 H. 7. c. 17. Sect. 9, 10.

Unlawfully taking any *Hawk*, or Hawk's Eggs. Stat. 5 Eliz. c. 21. Sect. 7.

Forfeited to the King, and to be at his Disposal.

Ten Pounds, to be divided between the King and Prosecutor.

Three Months Imprisonment; to be bound to the Good Behaviour for Seven Years.

Treble Damages to the Party grieved. Upon the Offender's Acknowledgment in Sessions, and Satisfaction to the Party, the Behaviour may be released.

(Hawking)

APPENDIX

Offences.	Game.	Penalties.
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(Hawking and Hunting.)

[One] Hunters in Forests, Parks or Warrens, in the Night-time, or disguised, Stat. 1 H. 7. c. 7. Sect. 3.	To be examined, and bound over, or committed. Rescous of the Execution of the Justice's Warrant, Felony.
Inferior Tradesmen, Apprentices, and other dissolute Persons, hunting or hawking, unless in Company with the Master of such Apprentice qualified by Law. Stat. 4 & 5 W. & M. c. 23. Sect. 10.	Subject to the same Penalties as Persons are where Game is found, and to be levied and employed in the same Manner.
[Qu. Sess.] Hunters in Forests, Parks, or Warrens, in the Night-time, or disguised. Stat. 1 H. 7. c. 7. Sect. 5, 6.	If the Fact be concealed, Felony. If confessed, fineable.
Hawking or Hunting with Spaniels in standing Corn, except on his own Ground, or with the Owner's Consent. Stat. 23 Eliz. c. 10. Sect. 4.	Forty Shillings to the Owner of the Ground.

(Heron.)

[Two] Takers of any old Heron, without their Grounds.	Six Shillings and eight Pence.
A young Heron. Stat. 19 H. 7. c. 11. Sect. 6.	Ten Shillings. The Offender to be examined, and committed till Payment.

Pigeon. Vide Title Deer, &c. supra.

(Wild-Duck, Teal, Widgeon and Water-Fowl.)

[One] Persons, between July 1 and Sept. 1. as they shall yearly happen, by Hayes, Tunnels, or other Nets, driving and taking any Wild-Duck, Teal, Widgeon, or any other Water-Fowl, in Fens, &c. or other Places of Resort for Wild-Fowl in the Molting Season. Stat. 9 Ann. c. 25. Sect. 4. One Witness on Oath.	5 s. for every Wild-Duck, Teal, or other Water-Fowl. One Moiety to the Informer, the other to the Poor: To be levied by Distress and Sale, rendering the Overplus, if any be, above the Penalty and Charge of Distress. For Want of Distress to be committed to the House of Correction for any Time not exceeding one Month, nor less than 14 Days, there to be kept to hard Labour. The Justice to order the Hays, Nets, or Tunnels to be seized and destroyed in his Presence.
[Qu. Sess.] Destroying or taking away any Wild-Fowl. Stat. 25 H. 8. c. 11. Sect. 5.	Forfeits for every Egg of a Crane or Bustard, 20 Pence; of a Bittern, Heron, or Shovelard, 8 Pence; of a Mallard, Teal, or other Wild Fowl, one Penny. To be divided between the King and Prosecutor.

Wheresoever any Person shall, for any Offence hereafter to be committed against any Law now in Being, for the better Preservation of the Game, be liable to pay any pecuniary Penalty, upon Conviction before any Justice or Justices of Peace; it shall be lawful for any other Person whatsoever, either to proceed to recover the said Penalty by Information or Conviction before a Justice, or to sue for the same by Action of Debt, &c. in any Court of Record; and the Plaintiff, if he recover, shall have double Costs.

Provided, That all Suits and Actions to be brought by Force of this Act, shall be brought before the End of the next Term after the Offence committed, and no Offender shall be prosecuted

APPENDIX.

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Prosecuted for the same Offence both by the Way prescribed by this Law, and by the Way prescribed by any of the former Laws. 8 Geo. c. 19. Sect. 1, 2.

Offences.

Gaol.

Penalties.

[One] CAN commit Murderers and Felons to no other Prison but to the Common Gaol. Stat. 5 H. 4. c. 10 & 11 & 12 W. 3. c. 19. Sect. 3.

[One or Du. Sess.] To settle what Persons under Arrest shall pay for each Night's Lodging, and other Expences. Stat. 22 & 23 Car. 2. c. 20. Sect. 9.

[One] An Offender, who is to be conveyed to Gaol, if he does not bear all the Charges. Stat. 3 Jac. 1. c. 10. Sect. 2.

His Goods (if he has any) are by Warrant, to be sold by the Constable, the Appraisement thereof to be made by the Neighbours, and the Overplus returned. If he has no Goods, the Constables, Church-wardens, and two or three honest Inhabitants, may, with the Allowance of a Justice under his Hand, tax every Inhabitant, to be levied by Distress and Sale.

Persons not paying Moneys charged for Repair of Gaols. Stat. 11 & 12 W. 3. c. 19. Sect. 2.

To be distrained; and if not paid in four Days, the Distress to be sold.

Continued for 7 Years by 10 Ann. c. 14.

Act 10 Annæ c. 14. made perpetual as to so much of the said Act as relates to the Building and Repairing County-Gaols, by Stat. 6 Geo. c. 19. Sect. 1.

May commit Vagrants, and other Criminals, Offenders, and Persons charged with small Offences, or for Want of Sureties, to the Common Gaol, or House of Correction, as he in his Judgment shall think fit. Stat. 6 Geo. c. 19. Sect. 2.

[Three] May consent, that Keepers of Gaols, upon emergent Occasions, may provide other Places for the Removal of Sick, or other Persons, out of the usual Gaols, but not against the good Will of the Owner. Stat. 19 Car. 2. c. 4. Sect. 2. Quor' 1.

To settle Gaolers Fees for Commitment, Discharge and Chamber-Rent, within their several Precincts, except London, Middlesex, and Surry, which are to be settled by the two Chief Justices, and the Chief Baron, or two of them, and the Justices of Peace, in their several Jurisdictions. Stat. 22 & 23 Car. 2. c. 20. Sect. 10.

Note, That the several Rates of Fees, and the Rates for the Government of Prisons, are to be signed by the Chief Justices, and Chief Baron, or two of them, and the Justices of Peace of London, Middlesex, and Surry; and by the Judges for the Circuits, and the Justices in their Precincts, in the other Counties; to be registred by the Clerk of the Peace, and hung in a Table in each Prison.

[Du. Sess.] Upon Presentment of the Grand Jury at the Assizes or Great Sessions, of the Insufficiency of the Prisons or Gaols, may upon Examination of Workmen agree on a Sum for Building or Repairing thereof, and equally levy the same on the several Divisions of the County, by Warrant issued at the Quarter-Sessions to the High Constable, &c. and may make a Receiver. Stat. 11 & 12 W. 3. c. 19. Sect. 1, 2.

Continued for 7 Years, by 13 Ann. c. 14. made perpetual by 6 Geo. c. 19.

Vide Title, House of Correction.

APPENDIX.

Offences.	Gilding and Goldsmiths.	Penalties.
[Du. Sess.] G ilding Sheaths, or any Metal, but Silver, and the Ornaments of H. Church; and silvering any Metal but Knights Spurs, and the Apparel belonging to a Baron, or above. Stat. 8 H. 5. c. 3. Sect. 4.	Ten Times the Value of the Thing so gilt, and a Year's Imprisonment. One third Part of the Forfeiture to the Prosecutor.	

To hear and determine all Offences about Goldsmiths, selling Silver, contrary to Stat. 2. H. 6. c. 14. Sect. 8.

Offences.	Gunpowder.	Penalties.
[Two] M AY summon and examine Dealers in Gunpowder upon their Oath, if 600 Pound is kept in any Place within <i>London</i> and <i>Westminster</i> , or 3 Miles of the Tower, or St. James's, or 2 Miles of any the Magazines of the Crown. Stat. 5 Geo. c. 26. Sect. 2.	And commit such as refuse to be examined, to the County-Gaol without Bail, till he conform, &c.	
If on Examination, or Oath of two Witnesses, it shall appear he has more than 600 Pounds, <i>ut supra</i> . Stat. 5 Geo. c. 26. Sect. 2.	May by Order cause him to remove it, and if he does not within 24 Hours after Notice of such Order, he forfeits, 20 Shillings for every 100 Pounds, to any that sues within 6 Months.	
May by Warrant order Store-houses, or Places used for keeping Gunpowder, to be searched in the Day-time, and to break open Doors, if Occasion.	Opposers hereof forfeit 5 Pounds to any that sues in 6 Months. And if more than 600 Pounds be found, to cause it to be removed at the Owner's Charge, to be levied by Distress. Stat. 5 Geo. c. 26. Sect. 3.	
None to carry thro' <i>London</i> , <i>Westminster</i> , or Suburbs, above 20 hundred Pounds of Gunpowder at a Time, and to be carried in Carriages and Barrels close jointed, and hooped and cased with Canvas or Leather. And Gunpowder carried by Man or Horse, to be put in Cases of Canvas or Leather, entirely covered. Stat. 5 Geo. c. 26. Sect. 4.	On Forfeiture of all the Gunpowder, on Conviction before two Justices. To Person seizing the same.	

Note, This Act does not extend to any Store-house or Magazine, belonging to the King, or to the proving Gunpowder by his Majesty's Officers; or to the carrying of Gunpowder to or from his Majesty's Magazines, or with Forces in their Marches. Stat. 5 Geo. c. 26. Sect. 5.

[Du. Sess.] The Sessions for *Essex*, *Kent*, and *Surry*, to appoint Places not exceeding two Acres in a Place, for erecting Warehouses for Gunpowder; and if the Land-Owners disagree, send Warrants to the Sheriff to return a Jury to enquire the Value: Such Inquisitions to be kept among the Sessions Records, and their Judgment final: To which End they may examine on Oath, and order the Sum not exceeding 30 Years Purchase to be paid the Owner; which if he refuses, they may receive for his Use, and thereon the Inheritance to be vested in the Purchaser. Stat. 5 Geo. c. 26. Sect. 8.

By the 11 of Geo. c. . The Quantity of Gunpowder kept in any one House, is not to exceed 200*l*. weight.

A P P E N D I X.

Offences.

Hackney Coaches and Chairs.

Penalties.

[One] **T**O put in Execution By-Laws made by the Commissioners, for licensing Hackney-Coaches, and approved by the Lord Chancellor, the two Chief Justices, or Chief Baron, or three of them. Stat. 5 & 6 W. & M. c. 22. Sect. 17.

No Person shall drive or let to hire by the Hour or Day, or otherwise, any Hackney-Coach, or Coach-Horses, within the Cities of London or Westminster, or Suburbs, or within the Bills of Mortality, without Leave or Licence from the Commissioners appointed by Virtue of the Stat. 9 Ann. c. 23. *Ibid.* Sect. 4.

Upon Pain to forfeit five Pounds, for every Offence.

To be levied by Distress, and to be sold in 10 Days, and the Overplus to be returned to the Owner. The Charges of the Distress to be first deducted, if not paid upon seven Days Notice.

In Default to be committed till Payment, without Bail. Sect. 12 & 17.

No Person shall carry for Hire, in any Hackney-Chair, any Person whatsoever in the Cities of London, &c without a Licence from the Commissioners. *Ibid.* Sect. 4.

Upon Pain to forfeit 40 Shillings for every Offence.

To be levied, *ut supra*, and in Default, to be committed, *ut supra*.

No Horse, Gelding, or Mare, to be used with any Hackney-Coach, to be under the Size of 14 Hands high, according to the Standard. *Ibid.* Sect. 4.

Five Pounds to be levied, *ut supra*; and in Default to be committed, *ut supra*.

No Person shall put the same Figure or Mark of Distinction upon his Coach or Chair, that is appointed for any other Coach or Chair, or shall blot out, obliterate, alter, or deface the Figure appointed by the Commissioners for his Coach, or Chair. *Ibid.* Sect. 4.

Under the Forfeiture of five Pounds for every Offence.

To be levied, *ut supra*, and in Default to be committed, *ut supra*.

One Moiety of the above Penalties to be to the Informer, the other to the Queen, her Heirs and Successors. Sect. 12 & 17.

No Hackney-Coachman, nor Driver, shall take for his Hire, in and about London and Westminster, or within 10 Miles thereof, above the Rate of 10 Shillings for a Day; reckoning 12 Hours to the Day; and by the Hour, not above eighteen Pence for the first Hour, and twelve Pence for every Hour after.

From any of the Inns of Court or thereabouts, to any Part of St. James's or City of Westminster (except beyond Turtle-Street) above twelve Pence; and the same Prices from the same Places to the Inns of Court, or Places thereabouts.

From any of the Inns of Court, or thereabouts, to the Royal Exchange, twelve Pence; and if to the Tower, Bishopsgate, or Aldgate, or thereabouts, one Shilling and 6 d. and the like Rates from and to any Place of the like Distance. *Ibid.* Sect. 6.

No Person to pay above twelve Pence for any Distance, not exceeding one Mile and four Furlongs; and if above that Distance, and not exceeding two Miles, eighteen Pence: The Commissioners to cause the several Distances between the most noted Places within the Weekly Bills of Mortality to be admeasured, and published. *Ibid.* Sect. 7.

No Person to pay Chairmen for an Hackney-Chair, carried any Distance within the said Limits, more than the Rate by this Act allowed for an Hackney-Coach, driven two Thirds of the same Distance; and Commissioners to publish in Writing the several Rates of Chairmen. Stat. 9 Ann. c. 23. Sect. 8.

Hackney Coachman or Chairman refusing to go at, or exacting more for his Hire than the Rates limited by the Stat. 9 Ann. c. 23. *Ibid.* Sect. 8.

Forfeits for every Offence 40 Shillings.

To be levied, *ut supra*, and in Default to be committed, *ut supra*.

All

APPENDIX.

Offences.

Hackney Coaches and Chairs.

Penalties.

All the Offences against the Stat. 9 Ann. c. 23. are to be heard and determined in a summary Way upon the Oath of one or more credible Witnesses (the Party accused being summoned to make his Defence) or upon Confession of the Party offending.

One Moiety of all the Forfeitures and Penalties to the Queen, her Heirs, &c. the other to the Informer. *Ibid.* Sect. 13.

The Breach of any of the Rules, and Orders appointed by the Stat. 9 Ann. c. 23. and the Penalties thereupon; and the Rules, Orders, and By-Laws made by the Commissioners, and allowed and approved by the Lord Chancellor, &c. are punishable, and to be inflicted and put in Execution by any Justice, &c. where such Offence shall be committed in as full and ample Manner as by the Commissioners. *Ibid.* Sect. 17.

No Person to be twice punished for the same Offence.

The Penalties levied by any Justice of the Peace, &c. by Virtue of the Stat. 9 Ann. c. 23. or By-Laws. The Queen's Part to be transmitted to the Receiver General of the Hackney Coaches and Chairs, and to be certified to the Commissioners within ten Days after levied. *Ibid.* Sect. 18.

Upon Pain to forfeit double the Value of the Sum which should be transmitted and certified.

Two Thirds to the Queen, the other to him that will inform or sue for the same.

Hackney Coachman, Driver, or Chairman, may ply and drive on the Lord's Day, within the Weekly Bills of Mortality, notwithstanding the Act 29 Car. 2. *Ibid.* Sect. 20.

Persons refusing or neglecting to pay Coachman or Chairman the Money justly due to him, or wilfully cutting, defacing, or breaking any Coach or Chair, upon Complaint thereof. *Ibid.* Sect. 22.

To grant a Warrant to bring the Offender before him, and upon Proof on Oath, to award reasonable Satisfaction for Damages and Costs; and on Refusal to pay or make Satisfaction, to bind over to the Quarter-Sessions.

Persons driving a Coach, or carrying a Chair for Hire, not being interested himself in the Licence so to do, but acting under the Licence of another, as his or her Servant, or otherwise, being guilty of any Misbehaviour in his Employment, by demanding more than his Fare, or by giving abusive Language, or any other rude Behaviour. *Ibid.* Sect. 56.

Forfeits a Sum not exceeding 20s. to the Poor; if not able, or refuse to pay, to be committed to the House of Correction, to be kept to hard Labour for 7 Days, and receive the Correction of the House before he be discharged.

If convicted by the Oath of one or more credible Witnesses before one Justice of London, Middlesex, or Surry.

Hackney Coachman or Driver, refusing to go at, or exacting more for his Hire than according to the Stat. 9 Ann. c. 23. or By-Laws made pursuant thereto. Stat. 1 Geo. c. 57. Sect. 2 & 7.

Forfeit not exceeding three Pounds, nor under 10s.

Offences to be determined, and Penalties and Forfeitures to be recovered, levied, and applied, as the 40s. Penalty may by 9 Ann. c. 23.

Justices have the same Power to inflict Penalties, as the Commissioners.

[Qu. Sess.] Finally to hear and determine the Matter of Complaint between Persons refusing to pay Coachmen or Chairmen, what is justly due; and cutting, defacing or breaking Coach or Chair, where the Party is bound over by a Justice, for not paying or making such Satisfaction as is awarded. *Ibid.* Sect. 22.

The Court is to award Satisfaction for Damages and Costs to the Party grieved; and for Non-payment to levy the same by Distress.

APPENDIX

Offences.

Harvest Workmen.

Penalties.

[Two] **T**O convey back Harvest or other Workmen who are licensed, and do not return when their Work is finished, or shall become impotent. Stat. 13 & 14 Car. 2. c. 12. Sect. 3.

Offences.

Hawkers and Pedlars.

Penalties.

[One] **H**awkers, Pedlars and Petty-Chapmen, trading without or contrary to Licence. Stat. 8 & 9 W. 3. c. 24. Sect. 3. 9 & 10 W. 3. c. 27. Sect. 3.

Confession, or due Proof upon Oath, of one or more Witnesses.

Persons so trading, and upon Demand, refusing to shew to a Justice, &c. a Licence. Stat. 8 & 9 W. 3. c. 24. Sect. 3. 9 & 10 W. 3. c. 27. Sect. 3.

Conviction, *ut supra*.

Constables, or other Officers, refusing, or neglecting upon due Notice, to aid or assist in the Execution of Stat. 8 & 2 W. 3. c. 24. Sect. 7. 9 & 10 W. 3. c. 27. Sect. 7.

For every Offence 12 Pounds. One Moiety to the Informer, the other to the Poor, to be levied by Distress and Sale.

Five Pounds to the Use of the Poor, and for Non-payment shall suffer as a common Vagrant, and be committed to the House of Correction.

40 s. One Moiety to the Poor, the other to the Informer, to be levied by Distress and Sale.

Note, Any Person may seize and detain any Hawker, &c. till such Time as he or she shall produce a Licence, if they have any; if not, till they give Notice to the Constable or some other Parish-Officer, who shall carry such Offender before a Justice, who is by Warrant to levy the Penalty out of the Offender's Goods and Wares, with reasonable Charges. *Ibid*. Sect. 8.

Persons trading as Hawkers, &c. who shall not, upon Demand, have their Licence ready to be produced. Stat. 3 & 4 Ann. c. 4. Sect. 4.

Forfeits as one trading without Licence, and may be committed, and the Forfeitures levied and employed, *ut supra*.

Makers and Wholesale Traders in *English* Bone-lace, and selling the same by Wholesale, are not *Hawkers*, &c. within the Stat. 8 & 9 W. 3. c. 24. And 9 & 10 W. 3. c. 27. And they, their Children, Apprentices, Servants or Agents (selling by Wholesale only) may go from House to House, or Shops, to their Customers, without being liable to the Penalties against *Hawkers*. Stat. 4 Geo. c. 6. Sect. 1.

Offences.

Hay.

Penalties.

[One] **P**ersons offering any old Hay to be sold within the *Weekly Bills of Mortality*, between the last of *August* and first of *June*, which does not weigh 56 Pounds a Truss at least; and between the first of *June* and the last of *August*, weighs not 60 Pounds a Truss new, and old 56. Stat. 2 W. & M. Sess. 2. c. 8. Sect. 16.

View, Confession, or one Witness.

One Shilling and six Pence for every Truss, to be levied and employed, as the Penalties for not Sweeping the Streets; which see in Title *Scavenger*.

Offences.

Hay and Oats.

Penalties.

[One] **T**aking more for Hay, Oats, &c. in the King's Progress than the

Forty Shillings, to be levied by Distress and Sale.

5 L.

Prices

A P P E N D I X.

Offences.	Hay and Oats.	Penalties.
Prices set. Stat. 13 Car. 2. c. 8. Sect. 5. 1 Jac. 2. c. 10. Sect. 5. 5 & 6 W. & M. c. 22. Confession, or Oath of Two Witnesses.		

Offences.	Hay and Straw.	Penalties.
[One] Persons suffering their Waggon, Cart, &c. to stand in any Place within the <i>Weekly Bills of Mortality</i> , laden with Hay or Straw to be sold, from Michaelmas to Lady-Day, and after Two a-Clock in the Afternoon; from Lady-Day to Michaelmas after Three. Stat. 2 W. & M. c. 8. Sect. 17. View, Confession, or one Witness.	Five Shillings, to be levied and employed, as the Penalties for not sweeping the Streets; which see in Title Scavenger.	

Offences.	Hay-Market.	Penalties.
[One] Persons refusing to pay 3 Pence a Cart-Load of Hay, and one Penny a Cart-Load of Straw, that shall stand to be sold in the Hay-Market, in the Parish of St. Martin's and St. James's, in Ease of the Parishioners of the said Parishes, for and towards the Paving and Amending the Street. Stat. 8 & 9 W. 3. c. 17. Sect. 3. One Justice of the Quorum of Middlesex or Westminster, may take the Complaint against such as stand longer in the said Hay-Market than they ought, whereby they forfeit. Stat. 8 & 9 W. 3. c. 17. Sect. 3.	The same to be levied by Warrant, under the Hand and Seal of one Justice of Middlesex or Westminster, by Distress, to be sold, if not paid in Three Days. Five Shillings, to be levied, as by 2 W. & M. c. 8.	

[Qu. Sess.] The Collectors of the Toll gathered in the Hay-Market, are yearly, at every Easter-Sessions, to give to the Justices of the Peace of the County of Middlesex and City of Westminster, a particular Account upon Oath, of their Receipts and Disbursements, and the Overplus is to go to the County of Middlesex. Stat. 8 & 9 W. 3. c. 17. Sect. 7.

Offences.	Heath, Furze, and Fern.	Penalties.
[One] Persons on Mountains, Hills, Heaths, Moors, Forests, Chases, or other Wastes, burning between 2 Feb. and 24 June, any Grig, Ling, Heath, Furze, Gors or Fern. Stat. 4 & 5 W. & M. c. 23. Sect. 11.	To be committed to the House of Correction, not exceeding one Month, nor under 10 Days, to be whipp'd, and kept to hard Labour.	

Offences.	Hemp and Flax.	Penalties.
[Qu. Sess.] Watering Hemp or Flax in the River Severn. Stat. 30 Car. 2. c. 9. Sect. 1.	Five Pounds for every Offence. One Moiety to the Poor, the other to the Prosecutor.	

To administer the Oaths to Foreigners, who shall use the Trade of Hemp or Flax Dressing for Three Years; of making and whitening Thread; Spinning, Weaving, &c. Cloth made of Hemp or Flax; and making Tapistry-Hangings, Storing Cordage, Twine or Nets for Fishery. Stat. 15 Car. 2. c. 15.

Hides.

APPENDIX

Offences.

Hides.

Penalties.

[One] TO administer an Oath to all subordinate Officers for the Duty on *Hides*, &c. who shall receive any Salary or Allowance, in respect of his Office, before he acts, for his due and faithful Execution of his Office. And to give a Certificate *gratis*. Stat. 9 Ann. c. 11. Sect. 45.

[Qu. Sess.] Putting *Hides* to Sale being putrified, or watering them at any other Times but *June*, *July*, or *August*. Stat. 1 Jac. 1. c. 22.

Three Shillings and four Pence a Hide, one Third to the King, one to the Prosecutor, and the other to the Town, Place, &c. where the Offence is committed.

Persons Buying rough *Hides*, or Calves Skins in the Hair, except such as can lawfully tan them. *Ibid.*

Forfeit them, or the Value.

Forestalling *Hides*, or Buying them otherwise than in open Fair or Market. *Ibid.*

Six Shillings and eight Pence a Hide, to be divided, *ut supra*.

Offences.

Highway-man.

Penalties.

[Two] IF any Person, endeavouring to apprehend a *Highway-man*, be killed, his Executors or Administrators, upon a Certificate under the Hand and Seal of the Two next Justices, shall receive the Sum of Forty Pounds. Stat. 4 & 5 W. & M. c. 8. Sect. 3.

The Sheriff in Failure of Payment, forfeits double the Sum.

To be recovered by Action of Debt, Bill, Plaint, or Information, &c. with treble Costs.

The Streets of *London* and *Westminster*, and other Cities, Towns and Places, are deemed and taken to be Highways within the Intent and Meaning of the Stat. 4 & 5 W. & M. c. 8. Stat. 6 Geo. c. 23. Sect. 8.

Offences.

Highways.

Penalties.

(Constables and Surveyors.)

[One] Constables and Surveyors of the *Highways*, neglecting to put in Execution the Statutes made for repairing the *Highways*. Stat. 22 Car. 2. c. 12. Sect. 1. View, or one Witness.

To be fined, not exceeding 40 s. To be levied by Warrant, directed to the High Constable, and to be employed in amending the *Highways*.

The Penalty is increased to 5 Pounds by 6 Ann. c. 29. Sect. 3.

Refusing any employed in the executing the Acts for Repairing the *Highways* or refusing Goods distrained by Virtue of them. Stat. 22 Car. 2. c. 12. Sect. 3.

Forty Shillings, to be employed, *ut supra*, and if not paid in Seven Days after Notice, to be committed till Payment.

View, or one Witness.

To take the Returns, which the Surveyors of the *Highways* are to make, of Defaulters, within a Month after every Default, and to present the same at the next Quarter-Sessions. Stat. 22 Car. 2. c. 12. Sect. 12

Surveyors of the *Highways* not viewing the Roads, Water-Courses, Bridges, Causeways, &c. and not returning, upon Oath, once in

The same Penalty as for refusing to execute the Office.

(Constables)

APPENDIX

Offences.

Highways.

Penalties.

(Constables and Surveyors.)

Four Months to a Justice. Stat. 3 & 4 W. & M. c. 12. Sect. 8.
Prosecution in Six Months.

Where Notice of Defaults is given in the Church by the Surveyors of the *Highways*, and the Defaulters do not repair and amend in 30 Days, and the Surveyors do. Stat. 3 & 4 W. & M. c. 12. Sect. 8.

Upon Oath of the Surveyors.
Prosecution, *ut supra*.

Surveyors of the *Highways* neglecting to erect or fix a Stone or Post, where Two or more cross *Highways* meet, with an Inscription thereon in large Letters, containing the Name of the next Market-Town, to which each of the adjoining *Highways* lead, according to the Precept to him to be directed by the Justices, at their Four Months Sessions for the *Highways*. Stat. 8 & 9 W. 3. c. 15. Sect. 7.

Surveyors of the *Highways* neglecting to put the 6 Ann. c. 29. or any former Laws for repairing *Highways*, in Execution. Stat. 6 Ann. c. 29. Sect. 3.

Justices of Corporations, &c. are to put in Execution this and all former Statutes relating to *Highways*. Stat. 1 Geo. c. 52. Sect. 7.

[Two] Surveyors of the *Highways* elected, and not taking the Office upon them. Stat. 2 & 3 P. & M. c. 8. Sect. 1. Quorum 1.

Bailiff or High Constable, not accounting for Monies by them received towards the Repair of the *Highways*. Stat. 2 & 3 P. & M. c. 8. Sect. 4. Quorum 1.

Surveyors of the *Highways* not presenting Defaulters in not Repairing the *Highways*, and all Offenders therein, to the next Justice. Stat. 5 Eliz. c. 13. Sect. 8.

To nominate on Jan. 3. yearly, or within 15 Days after, at a special Sessions, to be held for that Purpose, out of a List, to be to them returned by the Constables, Headboroughs, Tithing-men, Church-wardens, Surveyors of the *Highways*, and Inhabitants, One, Two, or more to be Surveyor or Surveyors of the *Highways*, under Hand and Seal. Stat. 3 & 4 W. & M. c. 12. Sect. 3.

Note. Justices are required to give Notice to Constables, &c. within the Division, Ten Days before the Holding their special Sessions. And none are qualified to be Surveyors who have not an Estate in Land in their own Right, or their Wife's, of 10 l. *per Ann.* or a personal Estate of 100 l. or occupy Lands, &c. of 30 l. *per Ann.* if such there be.

Defaulters to pay to the Surveyors, such Charges as one Justice shall think reasonable, to be levied by Distress and Sale.

Ten Shillings, to be levied by Distress and Sale, and employed towards such Stone or Post; if any Overplus, in repairing the *Highways*.

Five Pounds, to be levied by Distress and Sale in Three Days.

One Moiety to the *Highways*.

The other Moiety to the Prosecutor, so as he be an Inhabitant of the Town, Village or Place.

Twenty Shillings a-piece, by Distress and Sale, and employed in the Amendment of the *Highways*.

Increased to Five Pounds, by 3 & 4 W. & M. c. 12. Sect. 2.

To be committed till all Arrears are paid, save 8 Pence in the Pound for themselves, and 12 Pence for the Clerk of the Peace.

Forty Shillings, to be levied as the Penalties in 2 & 3 P. & M. c. 8.

APPENDIX.

Offences.

Highways.

Penalties.

(Constables and Surveyors.)

Persons nominated by the Justices to be Surveyors of the *Highways*, refusing or neglecting. Stat. 3 & 4 W. & M. c. 12. Sect. 3.
One Witness.
Prosecution in Six Months.

Five Pounds, to be levied by Distress and Sale.

One Moiety to the Informer, the other to the Repair of the *Highways*.

To name other Persons in the Room of Surveyors of the *Highways* refusing, *toties quoties*. Stat. 3 & 4 W. & M. c. 12. Sect. 3.

Constables, &c. who shall not return Lists of Names to the Justices at their special Sessions, out of which they are to nominate Surveyors of the *Highways*. Stat. 3 & 4 W. & M. c. 12. Sect. 3.

Conviction and Prosecution, *ut supra*.

Twenty Shillings, to be levied and employed, *ut supra*.

The Surveyors, every Four Months, to make their Presentments on Oath. Stat. 3 & 4 W. & M. c. 12. Sect. 10.

Conviction and Prosecution, *ut supra*.

Forty Shillings, to be levied and employed as the Penalty for refusing to hold.

Surveyor of the *Highways*, before he be discharged of his Office, is to account upon Oath, and if they have Money in their Hands, and do not pay it. Stat. 3 & 4 W. & M. c. 12. Sect. 9.

Prosecution in Six Months.

Double the Value, to be levied and employed, *ut supra*.

Surveyors neglecting their Duty in any Thing required by Stat. 3 & 4 W. & M. c. 12. Sect. 12.

Conviction and Prosecution, *ut supra*.

Forty Shillings, to be levied and disposed, *ut supra*.

Vide *Rate*, *infra*.

Surveyors of the *Highways* nominated by Virtue of the Stat. 3 & 4 W. & M. c. 12. within Fourteen Days after Acceptance of their Office; and so every Four Months, or oftner, if required thereto by Warrant, to view all the Roads, common *Highways*, Bridges, Causeways, Pavements, Hedges, Ditches, and Water-Courses appertaining to such *Highways*, and Nuisances and Incroachments made in or upon them. And to give an Account in Writing upon Oath, of the State and Condition of them, and of Neglects of Labourers, and of those obliged to find Labourers or Teams, to the Justices at their special Sessions. Stat. 1 Geo. c. 52. Sect. 2.

The like Penalty on Surveyors neglecting to give such Account, as on Surveyors refusing to execute the Office.

To be levied and disposed of as the Penalties are by 3 & 4 W. & M. c. 12.

Justices, at such their special Sessions, may excuse on reasonable Excuse.

Justices at their special Sessions, by Writing under their Hands and Seals, may order Roads out of Repair, within the Hundred or Division, to be amended, and in what Manner the same shall be performed. Stat. 1 Geo. c. 52. Sect. 3.

Surveyors required to proceed according to such Orders.

Sur-

3

For

APPENDIX

Offences.

Highways.

Penalties.

(Constables and Surveyors.)

Surveyors or other Persons misapplying any Fine, Penalty, or Forfeiture laid by Virtue of this Act, on Proof upon Oath before Justices at their Special Sessions, who likewise may examine upon Oath, Persons that can give any Account of Monies that ought to be applied to amend Highways. Stat. 1 Geo. c. 52. Sect. 5.

Forfeit Five Pounds to the Informer. To be levied by Distress.

Note, Justices Clerks not to take any Fee for Surveyor's Oath, or Accounts, on Pain of Ten Pounds, to be recovered in any Court of Record. Stat. 1 Geo. c. 52. Sect. 11.

[Du. Sess.] Surveyors neglecting their Duty Stat. 1 Geo. c. 52. Sect. 10.

Forfeit Forty Shillings, to be levied by Distress and Sale, if not paid in Eight Days.

(Obstructions.)

[Ct. Sess.] Persons laying in any Highways, not 20 Foot broad, any Thing whereby the same may be obstructed or annoyed. Stat. 3 & 4 W. & M. c. 12. Sect. 4.

One Witness.

Prosecution in Six Months.

Five Shillings, to be levied by Distress and Sale.

One Moiety to the Informer, the other to the Repair of the Highways.

Possessors of Lands next adjoining to Highways, where Timber, Stone, Hay, Straw, Stubble, or other Matter for making Dung is laid, shall remove and dispose of the same to their own Use; and if they neglect to clear the Way, or cleanse their Ditches, and carry away the Earth; to lay sufficient Trunks or Bridges, where there are Cartways into Grounds, by the Space of Ten Days after Notice given by Surveyors. Stat. 3 & 4 W. & M. c. 12. Sect. 6.

Conviction and Prosecution, *ut supra*.

Five Shillings for every Offence, to be levied and employed, *ut supra*.

Owner of Tree, Bush or Shrub, growing in any Highway, not cutting it down in 10 Days after Notice by the Surveyor. Stat. 3 & 4 W. & M. c. 12. Sect. 6.

Conviction and Prosecution, *ut supra*.

Five Shillings for every Offence, to be levied and employed, *ut supra*.

Persons neglecting or delaying to scour and keep open Ditches and Water-Courses adjoining to Highways, and to remove such Annoyances to the Highways 30 Days after Notice by Surveyors. Or shall leave the Earth of Ditches scoured in the Highways, for the Space of Eight Days, Oath thereof being made by Surveyors. Stat. 1 Geo. c. 52. Sect. 8.

Forfeit two Shillings and six Pence for every 8 Yards of Ditching so not scoured.

And not exceeding Five Pounds, nor under Twenty Shillings for each other Offence.

To be levied by Distress and Sale, and applied to the Amending the Highways.

[Du. Sess.] Not scouring Ditches, or keeping low Hedges, Trees and Bushes, according to 5 Eliz. c. 13. Stat. 18 Eliz. c. 10. Sect. 8.

Ten Shillings, to be levied by Distress and Sale.

APPENDIX

Offences.

Highways.

Penalties.

(Obstructions.)

Not scouring the Ditches in the Ground next the Highway. Stat. 18 Eliz. c. 10. Sect. 6.

Twelve Pence for every Rod unscoured, to be levied, *ut supra*.

Casting the Scouring of Ditches into the Highway, and suffering it to lie there Six Months. Stat. 18 Eliz. c. 10. Sect. 7.

Twelve Pence for every Load, to be levied, *ut supra*.

(Presentment and Certificate.)

[One] To certify the Presentments made by the Surveyors of the Highways the next Sessions; and his Presentment of the Highways, upon his own Knowledge, is a good Conviction. Stat. 5 Eliz. c. 13. Sect. 9.

(Rates.)

[Two] At Four Months Sessions upon Oath made by the Surveyors of the Highways what Sum or Sums they have expended for Materials to repair the Highways, The Justices are, by Warrant to order a Rate to be made, according to 43 Eliz. for Relief of the Poor, to re-imburse Surveyors. Stat. 3 & 4 W. & M. c. 12. Sect. 17.

Persons refusing to pay the above-mentioned Rate for re-imbursing the Surveyors. Stat. 3 & 4 W. & M. c. 12.

The Rate to be levied by Distress and Sale.

Prosecution in Six Months.

If any Fine, &c. imposed upon a Parish for not repairing the Highways, shall be levied on one or more of the Inhabitants; the Justices, at Four Months Sessions, shall cause a Rate to be made to re-imburse them, which is to be levied and paid by the Surveyors in a Month. Stat. 3 & 4 W. & M. c. 12. Sect. 14.

[Qu. Sess.] To order Rates to be made for repairing the Highways, but not to exceed Six Pence in the Pound upon Land, and Six Pence for 20 l. in Personal Estate, where they cannot be repaired by any former Law in Force. Stat. 3 & 4 W. & M. c. 12. Sect. 17, 18.

To order a Rate for Repair of Highways in the Parishes in *Middlesex* within the Bills of Mortality, not exceeding Four Pence in the Pound for Land, and Eight Pence for 20 Pounds Personal Estate. Stat. 2 & 3 W. & M. c. 8. Sect. 23.

On the Surveyor's Application to the Quarter-Sessions, if the Justices there find the Highways, &c. so far out of Order, that they cannot be repaired without a further Power than the Laws have appointed, they may cause Assessments to be made not exceeding what is limited by 3 & 4 W. & M. tho' the Six Days Work have not been performed. But raising Money by such Assessments, not to excuse the working of Teams, or Labourers, by Law appointed to work, &c. Stat. 1 Geo. c. 52. Sect. 6.

To make such Order for Relief of Persons aggrieved as they shall think convenient. The same to conclude and bind all Persons, except such who neglect to scour their Ditches, and carry away the Earth taken out of the same, or who shall not carry away Stone, Timber, Straw or Dung, left in Highways; or who shall not remove Annoyances to Highways by Water-Courses. Stat. 1 Geo. c. 52. Sect. 12.

Note, No Person is liable to be punished for any Offence against the Stat. 1 Geo. c. 52. unless prosecuted in Six Months. And no Person who shall be punished for any Offence by this Act, to be punished for the same Offence by Virtue of any other Act or Law whatsoever. Sect. 14. *Ibid*.

(Sessions.)

[Two] To hold a special Sessions for the Highways, every Four Months, and summon there-

Justices neglecting or refusing to do what is required of them by this Act, forfeit Five Pounds,

APPENDIX

Offences.

Highways.

Penalties.

(Sessions.)

thereunto all the Surveyors of the Highway, and declare to them what they are obliged to do by Virtue of this, or any former Act. Stat. 3 & 4 W. & M. c. 12. Sect. 10.

Pounds, to be recovered by Action of Debt, &c. One Moiety to the Prosecutor, the other in Amending the Highway. Prosecution in Six Months.

[Five] After Summons, to shew Cause why Highways should not be enlarged; at the Quarter-Sessions to order the Enlarging or Widening any Highway: But the Ground taken in must not exceed Eight Yards; nor must any House be pull'd down, or Garden, Orchard, Court or Yard, taken away; and Satisfaction must be made, by Jury, for the same, not exceeding 25 Years Purchase. Stat. 8 & 9 W. 3. c. 15. Sect. 1.

An Appeal to the Judge of Assize.

[Five] To order Assessments upon Land not exceeding Six Pence in the Pound; and upon Personal Estate, not exceeding Six Pence for every 20 Pounds, upon such as are to pay to the Highways, towards Payment of the Owners of the Land taken away. Stat. 8 & 9 W. 3. c. 15. Sect. 2.

Appeal, *ut supra*.

[Qu. Sess.] To enquire of Breaches of 2 & 3 P. & M. c. 8. concerning Highways, and to set such Fines as they, or any Two (*Quorum* 1.) shall think fit, to be levied by Way of Distress; and if no Distress, or not paid in 20 Days after Demand, double so much, to be employed in mending the Highways. Stat. 2 & 3 P. & M. c. 8. Sect. 10.

To assess a Fine upon a Justice of Peace his Presentment of the Highways, upon his own Knowledge, to be estreated, levied, accounted, and employed, as by 2 & 3 P. & M. c. 8. Stat. 5 Eliz. c. 13. Sect. 9.

(Who to work.)

[Two] Persons having a Team, or Plough-Land, either in Arable or Pasture, and a Subsidy-Man of Nine Pounds in Goods, or Forty Shillings in Lands, not sending Two able Men with Team and Tools convenient, to work for Six Days, Eight Hours in a Day. Stat. 2 & 3 P. & M. c. 8. Sect. 2. 5 Eliz. c. 3. Sect. 2. 18 Eliz. c. 16. Sect. 2, 3.

Quorum 1.

Ten Shillings for every Day, to be levied by Distress and Sale, and employed in the Amending of the Highways.

Cottagers not working themselves, or finding a sufficient Labourer. Stat. 2 & 3 P. & M. c. 8. Sect. 2. *Quorum* 1.

Twelve Pence for every Day, to be levied, *ut supra*.

Labourers neglecting to work in the Highways.

One Shilling and Six Pence.

Others, neglecting to send a Man and a Horse.

Three Shillings.

Others neglecting to send a Cart with Two Men. Stat. 22 Car. 2. c. 12. Sect. 9.

Ten Shillings.

Upon Surveyor's Complaint, and one Witnesses.

To be levied by Distress and Sale.

Two or more Justices of the Peace for the County of Middlesex, at any Petty Sessions, or Special Sessions of the Peace, upon Application made to them by any Five of the Trustees for repairing the Highways between Kilburn-Bridge in Middlesex, and Sparrows-Herne in Hertford, to adjudge and determine what Part and Proportion of the Statute-Work shall be done in the said Roads, by and in each Parish. 8 Geo. c. 9. Sect. 3.

APPENDIX

Offences.

Hops.

Penalties.

[One] **T**O administer an Oath to every Officer, who shall be empowered to make a Charge on Hops, for the due and faithful Execution of his Office, and shall give to such Officer a Certificate thereof. Stat. 9 Ann. c. 12. Sect. 12.

Pickers or Gatherers of Hops, and others privately conveying any Hops from the Place of their Growth, or where put to be cured, bagged or weighed. Stat. 9 Ann. c. 12.

Five Shillings for every Pound, to be levied by Distress; and if no Distress can be found, the Offenders to be committed to the House of Correction, not exceeding a Month.

Persons obstructing, beating, or abusing the Officer in the Execution of his Office, concerning the Duty on Hops. Stat. 9 Ann. c. 12.

Five Pounds, to be levied, *ut supra*.

Offences.

Horses.

Penalties.

[One] **T**O take the Oaths of two Witnesses to prove a stolen Horse to be the Owner's, and on the Buyer's Oath what he paid for the Horse, the Owner is to have him again, paying the Buyer: But this must be done in six Months after the Sale. Stat. 31 Eliz. c. 12. Sect. 4.

[Du. Sess.] Have Power to hear and determine all Offences against 32 H. 3. c. 13. for putting stoned Horses to feed upon Forests or Common Ground, above two Years old, and not 15 Hands high, according to the Standard, and for refusing to measure them. Stat. 32 H. 8. c. 132. Sect. 3.

Vide Titles Cattle and Fairs.

Offences.

House of Correction.

Penalties.

[Du. Sess.] **T**O give Orders for erecting Houses of Correction, and for Maintenance and Government of the same, and for the Punishment of Offenders committed thither; and to appoint Governors and their Salaries, which are to be paid Quarterly by the Treasurers. Stat. 39 Eliz. c. 4. Sect. 1. 7 Jac. 1. c. 4. Sect. 6.

Governors of Houses of Correction, not yielding a true Account every Quarter-Sessions, of Persons committed, or suffering any to escape, or to be troublesome to the County by going abroad. Stat. 7 Jac. 1. c. 4. Sect. 9.

Fineable, as Justices shall think fit.

Vide Title Gaol.

Offences.

Informers.

Penalties.

[One] **U**Pon Informations for Trespasses, Batteries, and other Misdemeanors, to take the Informer's Recognizance in 20 l. That he will prosecute with Effect, and abide by such Order as the Court shall direct. Stat. 4 & 5 W. & M. c. 18. Sect. 2.

Offences.

Journeyman Taylors.

Penalties.

[Two] **A**NY Person brought up in, or professing, using, or exercising the Art or Mystery of a Taylor, or Journeyman

To be committed either to the House of Correction, to hard Labour, not exceeding two Months, or to the Common Gaol, there

APPENDIX.

Offences.

Journeyman Taylors.

Penalties.

man Taylor, in making up Mens or Womens Work in the Cities of *London* and *Westminster*, or *Weekly Bills of Mortality*, who shall at any Time after the First of *May* 1721. keep up, continue, act in, make, enter into, sign, seal, or be knowingly interested or concerned in any Contract, Covenant, or Agreement, in Writing, or not in Writing, for advancing their Wages, or for lessening their usual Hours of Work.

One or more credible Witnesses.

Prosecution in three Months after the Offence was committed. Stat. 7 Geo. c. 13. Sess. 1. Sect. 1.

to remain without Bail or Mainprize, not exceeding 2 Months, at the Discretion of the Justices before whom convicted.

Journeyman Taylors, Servants, and Apprentices to Taylors, and others, employed or retained as Taylors, in making up Mens or Womens Work within the Cities of *London* and *Westminster*, or *Weekly Bills of Mortality*, after the first of *May* 1721. to work from Six of the Clock in the Morning, until Eight at Night. The Master to allow one Penny Half-penny a Day for Breakfast, and one Hour for Dinner. And for the Time or Hours of Work aforesaid, to pay them not exceeding *two Shillings per Diem*, from the 25th Day of *March* to the 24th Day of *June*; and for the Rest of the Year, 1 s. and 8 d. per Diem. Stat. 7 Geo. c. 13. Sess. 1. Sect. 2.

Taylor or others, acting as such within the Limits aforesaid, hiring, retaining, or employing any Journeyman Taylor, or other Person, not being an Apprentice, to pay them after the Rates aforesaid for the full Time for which they hire them. *Ibid.* Sect. 3.

Upon Complaint thereof to summon before them the Party offending, and for Non-payment of the Wages directed by this Statute, to issue their Warrant for levying such Wages by Distress and Sale, &c. *Ibid.* Sect. 4.

For Want of Distress to commit the Party offending to the Common Gaol without Bail or Mainprize, till Payment or Satisfaction made.

Journeyman Taylors, &c. departing from his Service before the End of the Term for which he is hired, or until the Work for which he is hired, be finished; or not being retained or employed, shall refuse to work after Request made for that Purpose by any Master Taylor, for the Wages and Hours limited, unless some reasonable Cause to be allowed by two Justices. And being thereof convicted. *Ibid.* Sect. 6.

To be committed to the House of Correction to hard Labour not exceeding two Months.

Taylor, &c. within the Limits aforesaid giving, allowing, or paying any more, or greater Wages than limited by this Statute or the Qu. Sess. for the Hours of Work aforesaid, to any Journeyman Taylor, &c. being lawfully convicted.

Five Pounds. One Moiety to the Informer or Prosecutor.

The other to the Poor of the Parish where, &c.

Prosecution in three Months. *Ibid.* Sect. 7.

Journeyman Taylors, &c. taking more or greater Wages for the Hours of Work aforesaid than limited by this Stat. or Qu. Sess. *Ibid.* Sect. 7.

To be sent to the House of Correction to hard Labour, not exceeding 2 Months.

Note, All Wages, Pay or Allowances contrary to this Act or Order of Qu. Sess. are null or void. *Ibid.* Sect. 7. This

A P P E N D I X.

<i>Offences.</i>	Journeyman Taylors.	<i>Penalties.</i>
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This Act does not extend to Wages or Allowances agreed upon for Working before or after the Hours of Work limited, or to be limited. *Ibid.* Sect. 8.

[*Qu. Sess.*] An Appeal lies to the next General Quarter-Sessions, giving Six Days Notice, whose Judgment is final. And may award reasonable Costs to either Party, as to them shall seem just. *Ibid.* Sect. 9.

Within the Limits aforesaid, upon Application to be made to them for that Purpose, may from Time to Time take into their Consideration the Plenty or Scarcity of the Times, &c. and alter the Wages and Hours of Work directed by this Statute. And may order and appoint what *Wages* and *Allowances* shall be paid or made to Journeyman Taylors, &c. and what *Hours* they shall work, which Rates and Alterations the Sessions must cause to be printed and published in Fourteen Days next after such General Quarter-Sessions, at the reasonable Expence of the Persons desiring the same. And from and after Publication thereof, All Taylors and their Journeyman, &c. not observing the same, and being thereof convicted. *Ibid.* Sect. 5.

Prosecution in Six Days after Offence committed.

To be imprisoned, not exceeding Two Months.

<i>Offences.</i>	Jurors.	<i>Penalties.</i>
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[*Qu. Sess.*] **T**O take the Return of the Constables and Headboroughs, of their List of Names and Places of Abode, of Persons qualified to serve on Juries, between the Age of 21 and 70; which they are to make at *Michaelmas-Sessions* yearly; and to cause the Clerk of the Peace to deliver a Duplicate thereof to the Sheriff, before the first of *January* after, and to enter the same fairly in a Book. Stat. 7 & 8 W. 3. c. 32. Sect. 4.

Note, The foregoing Act is continued for 11 Years, and to the End of the next Sessions of Parliament; and an explanatory Clause added touching *Jurors* in *Yorkshire*, not to be returned to serve at the Sessions or Adjournments there above once in Four Years. 10 Ann. c. 14. Sect. 4.

This not to extend to *Affizes*, or General Gaol-Delivery.

At *Midsummer-Sessions* yearly to issue Warrants, under the Hands and Seals of Two or more, to the High Constables, to issue out their Precepts to prepare a List of Freeholders, according to 7 & 8 W. 3. c. 32. which the Constables are to return the first Day of *Michaelmas-Sessions*.

Note, This Act, and the Act 7 & 8 W. 3. c. 32. are to be read publickly in open Court. Stat. 3 & 4 Ann. c. 18. Sect. 5.

Continued for 11 Years, &c. by 10 Ann. c. 14. Sect. 4.

The High Constables not issuing their Precepts to the Constables, to prepare their Lists of Persons to serve on Juries. Stat. 3 & 4 Ann. c. 18. Sect. 5.

Ten Pounds.

The Petty Constables not returning the List of Persons to serve on Juries. Stat. 3 & 4 Ann. c. 18. Sect. 5.

Five Pounds.

Vide Title Pannels of Juries.

Justices

A P P E N D I X.

Offences.

Justices of Peace.

Penalties.

Justices have Power to arrest and chastise Riotors, Barretors, and other Offenders; and also to imprison and punish them according to Law, and by Discretion and good Advise-ment; also to bind People of evil Fame to the Good Behaviour, to hear and determine Felonies and Trespases done in the same County, according to Law. And to impose Fines for Trespases, which must be reasonable and just. Stat. 34 Eliz. 3. 1.

Justices must keep their Sessions Four Times in the Year, and by Three Days, if need be, viz. in the first Week after Michaelmas, Epiphany, Easter, and the Translation of St. Thomas the Martyr, viz. Becket, being the 7th of July. And oftner, if need require. Stat. 12 R. 2. c. 10. 2 H. 5.

Justices of Peace of *Middlesex* are not compellable to keep their Sessions above twice in the Year, notwithstanding the Stat. 12 R. 2. c. 10. yet they may keep them oftner at their Discretion. Stat. 14 H. 6.

None (except Men learned in the Law, or inhabiting Corporations) to be Justices, unless their Lands be worth 20 Pounds per Annum. Stat. 18 H. 6. 11.

If any be put into the Commission, not having Lands, *ut supra*, and do not within one Month after Notice thereof acquaint the Lord Chancellor therewith, or do sit or make any Warrant by Force of such Commission. *Ibid.*

Forfeits 20 Pounds.

To be divided betwixt the King and the Prosecutor.

Justices must certify Recognizances to the next General or Quarter-Sessions, where, if the Party bound, being called, do not appear, the Recognizance must be certified into the Chancery, King's Bench, or Exchequer. Stat. 3 H. 7. 1.

A new Commission of the Peace, or Gaol-Delivery of the whole County, does not supersede a Commission granted to a City or Town Corporate. Stat. 2 & 3 P. & M. 18.

If a Justice for any County at large shall dwell in a City, that is a County of it self, and within the County at large for which he shall be appointed a Justice, though not within the same County, he may grant Warrants, take Examinations, &c. at his own Dwelling-house, though it be out of that County where he is authorized to act as a Justice, and in some City or Precinct adjoining, that is a County of it self; and such Acts of the Justice, and of the Peace-Officers in Obedience to any such Warrant, shall be good in Law, though it happen to be out of his Limits.

Provided, That nothing in this Act shall give Justices of the County Power to hold their Quarter-Sessions in Cities that are Counties of themselves; nor Peace-Officers of the County at large, to intermeddle in any Matters arising within such Cities or Towns. 9 Geo. c. 7. Sect. 3.

Offences.

Keels.

Penalties.

[One] **P**ersons removing or altering the Marks of Keels, Boats, &c. Stat. 6 & 7 W. 3. c. 10. Sect. 7. One Witness.

Ten Pounds, to be levied by Distress and Sale; for Default, 3 Months Imprisonment. The Penalty between the King and the Discoverer.

APPENDIX

Offences.

Leather.

Penalties.

[Du. Sect.] THE Mayor and Aldermen of London to chuse and swear Eight expert Men out of some of the Four Companies of Shoemakers, Carriers, Girdlers and Sadlers, to be Searchers and Sealers of all tanned Leather there, whereof one to be assigned to keep the Seal. Stat. 1 Jac. I. c. 22. Sect. 31.

Forty Shillings, to be divided between the King and Prosecutor.

Head Officers in Corporate and Market-Towns, and Lords of Liberties, to appoint and swear yearly Two, Three, or more honest and skilful Men to be Searchers and Sealers of Leather. Ibid. Sect. 32.

Forty Shillings, to be divided, *ut supra*.

The Mayor of London, and the Head Officer, or Lord aforesaid, to appoint Six Triers of insufficient Leather and Leather-Wares. Ibid. Sect. 35.

Five Pounds, to be divided, *ut supra*.

Triers not doing their Duty without Delay. Ibid. Sect. 35.

5 l. to be divided, *ut supra*.

A Trier in London continuing Two Years together. Ibid. Sect. 36.

Incapable of being chosen for 3 Years after, on Pain to forfeit for every Month he continues otherwise in that Office 10 l. to be divided in Thirds. One to the King, one to the Prosecutor, and the other to the City, Borough, Town or Lord of the Liberty where the Offence is committed.

Searcher or Sealer refusing in convenient Time to do his Office, or allowing insufficient Wares. Ibid. Sect. 37.

40 s. to be divided in Thirds, *ut supra*.

Searchers or Sealers taking Bribes, or exacting more than due Fees. Ibid. Sect. 37.

20 l. to be divided in Thirds, *ut supra*.

Searcher or Sealer being lawfully elected, and refusing the Office. Ibid. Sect. 37.

10 l. to be divided in Thirds, *ut supra*.

Selling tanned Leather in London before it is searched and sealed. Ibid. Sect. 39.

Forfeited, or the Value thereof, to be divided in Thirds, *ut supra*.

Withstanding the Searchers and Sealers in the Execution of their Office, or their seizing insufficient Wares Ibid. Sect. 40.

5 l. to be divided in Thirds, *ut supra*.

Persons selling any tann'd Leather (red or unwrought) before it is registred. Ibid. Sect. 42.

The Value thereof to be divided in Thirds, *ut supra*.

Persons Buying any tanned Leather before it be searched and sealed; or carrying it out of the Fair or Market before it be registred. Ibid. Sect. 44.

The same, or the Value thereof, to be divided in Thirds, *ut supra*.

Artificers in London using tanned and curried Leather, putting into his Wares Leather

The Wares, and the just Value, to be divided in Thirds, *ut supra*.

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APPENDIX

Offences.	Leather.	Penalties.
ther insufficiently tanned or curried. <i>Ibid.</i> Sect. 44.		
Such Artificers selling any where but in open Shop, Fair or Market, where due Search may be had. <i>Ibid.</i> Sect. 45.		The Wares, and Ten Shillings for every Offence, to be divided in Thirds, <i>ut supra.</i>
Buying forfeited Wares to sell again. <i>Ibid.</i> Sect. 47.		3 s. 4 d. for every Parcel, to be divided in Thirds, <i>ut supra.</i>

Note, The Stat. 1 Jac. 1. c. 22. is not to prejudice the Authority of the Universities, so as their Officers observe the Provision of the same; and Hides or Skins of Ox, Steer, Bull, Cow, Calf, Deer, Goats and Sheep, being tanned or tawed, and salt Hides are reputed Leather within this Act. *Vide* Titles, Currier, Shoemaker and Tanner.

Offences.	Lights.	Penalties.
[One] House-keepers, within the <i>Weekly Bills of Mortality</i> , whose Houses adjoin to or near the Street, from <i>Michaelmas</i> to <i>Lady-day</i> , not hanging out Lights every Night from the Time it is dark, till 12 at Night, or paying to the Lamps. Stat. 2 W. & M. c. 8. Sect. 15. View, Confession, or one Witness.		Two Shillings every Default, to be levied and employed as the Penalties for not sweeping the Streets.

[Two] To approve the Distances which one Lamp is to be set from the other. Stat. 2 W. & M. c. 8.

Offences.	Lotteries.	Penalties.
[Two] After the 1 Decemb. 1721. every Person who shall erect, set up, continue, or keep any Office or Place under the Denomination of Sales of Houses, Lands, Advowsons, Presentations to Livings, Plate, Jewels, Ships, Goods, or other Things, for the Improvement of small Sums of Money, or shall sell or expose to Sale any Houses, &c. by Way of <i>Lottery</i> , or by Lots, Tickets, Numbers, or Figures; or who shall make, print, advertise, or publish, or cause to be made, advertised, or published Proposals or Schemes for advancing small Sums of Money by several Persons, amounting in the Whole to large Sums, to be divided amongst them by the Chances of the Prizes in some publick Lottery or Lotteries, or shall deliver out, or cause, or procure to be delivered out Tickets to Persons advancing such Sums, to entitle them to a Share of the Money so advanced, according to such Proposals or Schemes; or shall make, print or publish, or cause to be made, &c. any Proposal or Scheme of the like Nature, under any Denomination or Title whatsoever.		500 l. over and above any former Penalties inflicted by any former Act or Acts of Parliament. One Third to his Majesty, one other Third to the Informer, and the remaining Third to the Poor of the Parish, where the Offence is committed. To be levied by Distress and Sale; and also to be committed for every such Offence to the County-Gaol, without Bail for one whole Year, and from thence till full Payment be made of the 500 l. forfeited as aforesaid.

APPENDIX

<i>Offences.</i>	Lotteries.	<i>Penalties.</i>
One or more credible Witnesses. Stat. 8 Geo. c. 2. Sect. 36.		

Note, An Appeal lies to the next General Quarter-Sessions, whose Judgment is final. Ibid.

<i>Offences.</i>	Lunaticks.	<i>Penalties.</i>
[Two] M AY by their Warrant directed to the Constables, Church-wardens and Overseers of the Poor, of the County or Place where <i>Lunaticks</i> or mad Persons shall be found, cause such <i>Lunaticks</i> and Persons <i>furiously mad</i> to be locked up, and, if necessary, chained, &c. (but not whipp'd) during their Lunacy, &c. and charge their Estate (if any) for their Maintenance; or (if none) provided for as the Poor of the Parish. 12 Ann. Sess. 2. c. 23. Sect. 22.		

<i>Offences.</i>	Malt.	<i>Penalties.</i>
[One] C onstable may search for Malt which is faulty or mingled, and being found, may with the Advice of a Justice of Peace, make Sale thereof. The Prosecution must be within a Year; and not to be against Persons who make their own Malt. Stat. 2 & 3 E. 6. c. 10. Sect. 4.		

Persons disobeying the Restraint put upon Maltsters, and Buyers of Barley, for making Malt, by the Justices in their Sessions: Stat. 39 Eliz. c. 16. Sect. 1.

Three Days Imprisonment without Bail, and there to remain till they enter into a Recognizance of 40 l. to obey the said Restraint.

Note, This extends not to such as have Barley of their own Growing, Tithe-Corn or Rent-Corn, but they may make Malt.

[Du. Sess.] Every Person employing less Time in making and drying of Malt (except in *June, July* and *August*) than Three Weeks, and in those Months less than 17 Days; and putting to Sale Malt mingled of good and bad. Stat. 2 & 3 Ed. 6. c. 10. Sect. 2.

Two Shillings for every Quarter.
To be divided between the King and Prosecutor.

Putting any Malt to Sale before (by Treading, Rubbing and Fanning it) he shall have taken out of every Quarter, Half a Peck of Dust, or more. Stat. 2 & 3 Ed. 6. c. 10. Sect. 3.

Twenty Pence for every Quarter, to be divided, *ut supra*.

May restrain the superfluous Number of Maltsters, and Buyers of Barley to be converted into Malt. Stat. 39 Eliz. c. 16. Sect. 1. *Vide Title Malt in Title Excise.*

<i>Offences.</i>	Manufactures.	<i>Penalties.</i>
[Two] T O hear and determine all Wages, Frauds, &c. of Labourers employed in <i>Manufactures</i> of Woollen, Linen, Fustian, Cotton and Iron, concerning any Work done in the same Manufactures. Stat. 1 Ann. c. 10.		

[four]

APPENDIX

Offences.	Stats.	Penalties.
[Four] T O licence Persons to make Mats, Coverlets, and Dornicks, in <i>Norwich</i> , or <i>Norfolk</i> . If a Reward be taken for such Licence, the Forfeiture is five Pounds.	Stat. 5 & 6 Ed. 6. c. 24. Sect. 5.	

[Qu. Sess.] Making any Mats, Dornicks, or Coverlets, in <i>Norfolk</i> , without Licence, except in a corporate Town. Stat. 5 & 6 Ed. 6. c. 24. Sect. 3.	Every six Felts 20s. every Coverlet 3s. 4d. every six Yards of Dornicks 6s. 8d. Not to extend to <i>Pulham</i> in <i>Norfolk</i> .
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Offences.	Money.	Penalties.
[One] T O hear and determine, upon Oath, whether any Piece of Money can be counterfeit or not. Stat. 9 & 10 W. 3. c. 21. Sect. 1.	Vide Title Coin.	

Offences.	Murder.	Penalties.
[Qu. Sess.] I N Case of Murder, may enquire of Escapes, and certify them into the <i>King's Bench</i> . Stat. 3 H. 7. c. 1. Sect. 21.		

Offences.	Non-conformity.	Penalties.
[One] T O take Information of the Non-conformity of Persons in publick Offices, or Imployments, Places of Trust, &c. who receive Salaries or Wages, by reason of any Patent or Grant, or are of the <i>King's Household</i> , or bear Office in any Corporation. Stat. 10 Ann. c. 2.	Forty Pounds, recoverable in <i>Westminster-Hall</i> , and the Person incapable of any Office, &c. for the future; except he conforms for a Year, and receives the Sacrament three Times within the same.	

Offences.	Norwich Stuffs.	Penalties.
[One] T O convict Counterfeits of the Seal for <i>Norwich Stuffs</i> or sealing them with a counterfeit Seal, or removing the Seal from one Piece to another. Stat. 13 & 14 Car. 2. c. 5. Sect. 14.	Twenty Pounds.	
Confession or two Witnesses.		

Buyers of Stuffs unsealed, and they in whose Possession they are found, other than the first Owner or Maker, and the Maker or Seller delivering them unsealed. Stat. 13 & 14 Car. 2. c. 5. Sect. 13.	Four Shillings for the Poor of the Trade, to be levied by Distress, &c.
Two Witnesses.	

Weavers weaving without their proper Mark at the Head of the Piece. Stat. 13 & 14 Car. 2. c. 5. Sect. 16.	Three Shillings to be levied and disposed, <i>ut supra</i> .
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Persons refusing to appear on any Jury to be returned, by Virtue of the Stat. 13 & 14 Car. 2. c. 5. Sect. 20.	Five Shillings to be levied and disposed, <i>ut supra</i> .
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APPENDIX.

Offences.	Norwich Stuffs.	Penalties.
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[Two] Two Justices of the County of *Norfolk*, shall join with the Mayor, and one Justice of the City of *Norwich*, in taking the Account of the Wardens of the Weavers of *Norwich* Stuffs quarterly, and applying one half of the Fines and Forfeitures for the Poor of the said Trade. Stat. 13 & 14 Car. 2. c. 5. Sect. 22.

[Three] Three Justices of the County of *Norfolk*, with the Mayor of *Norwich*, and two Justices of the City, to confirm By-Laws made by the Wardens and Assistants there chosen, for the regulating the Making of *Norwich* Stuffs. Stat. 13 & 14 Car. 2. c. 5. Sect. 3. Quor. 1.

Offences.	Oath.	Penalties.
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[One] If any, who maintain that the Taking of an Oath in any Case whatsoever is unlawful, do refuse to take an Oath, where by Law they are bound; or do endeavour to perswade others to refuse; or maintain that the Taking an Oath in any Case whatsoever is unlawful. Stat. 13 & 14 Car. 2. c. 1. Sect. 2.	To be committed to Gaol, or be bound over with Sureties to the Quarter-Sessions, in Order to Conviction.
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Note, Quakers are exempted from the Penalties of this Act, per Stat. 1 W. & M. c. 18. Sect. 13.

Person refusing the Oaths when tendered. Stat. 1 W. & M. Sess. 1. c. 18.	To enter into a Recognisance with two Sureties of 50<i>l.</i> for his producing a Certificate under the Hands of six of the Protestant Congregation, whereof he is one, &c. that he is a Protestant.
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[Two] In Default of Justices in Corporations, two Justices of the County are to administer the Oaths required to be taken by Officers in Corporations. Stat. 13 Car. 2. c. 1. Sect. 10.

To administer the Oath of Allegiance to any Person of the Age of eighteen, or above, and not a Peer. Stat. 7 Jac. 1. c. 6. Quor. 1.

To take the Oath and Declaration of Allegiance and Fidelity of Dissenters prosecuted contrary to 1 W. & M. c. 18. And the solemn Affirmation of Quakers, with their Subscription to the Confession of the Christian Faith, and to certify the same to the Sessions. Stat. 10 Ann. c. 2.

Two next Justices, *Quorum unus*, to administer an Oath to the Sheriff or Returning Officer, upon his delivering over to the Clerk of the Peace the Poll-Books of the Election of Knights of the Shire, within 20 Days after the Election, That he has delivered over all the said Books without Imbezilment or Alteration, Or where there are more Clerks of the Peace than one, the Original Books to one, and attested Copies to the Rest. 10 Ann. c. 23. Sect. 5.

[Qu. Sess.] To discharge Persons certified by two Justices to have refused to take the Oath, and subscribe the Declaration, upon their doing it in open Sessions. Stat. 1 W. & M. c. 15. Sect. 8.

All Persons who shall be admitted into any Office Civil or Military; Ecclesiastical Persons, Heads of Colleges, &c. Serjeants at Law, Counsellors, Attornies, Solicitors, &c. practising as such in any Court, shall within three Months take the Oaths, at the Quarter-Sessions, or in one of the Courts at <i>Westminster</i>. Stat. 1 Geo. c. 15.	Neglecting, are disabled to execute Offices and Employments; to sue any Action, to be a Guardian, Executor or Administrator; not capable of a Legacy, or to vote for a Member of Parliament; and to forfeit 500<i>l.</i>
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A P P E N D I X.

Offences.

Oath.

Penalties.

Justices in Sessions to take the *Oaths*, of Persons having Offices, &c. convicted of Non-Conformity; on their conforming, that they have conformed for a Year past, and received the Sacraments three Timesw ithin that Time. Stat. 10 Ann. c. 2.

Offences.

Officers and Soldiers.

Penalties.

[One] **W**ithin 48 Hours after any Muster made, where the Mayor, Chief Magistrate, or other Officer, to whom Notice was given to be present at such Muster, shall not have attended to swear the Commissary or Muster-Master, who must then produce the Muster-Roll to be examined by the Justice, who must sign the same, if there be no sufficient Objection thereunto. 12 Geo. c. 3. Sect. 11.

Any Person, that shall be falsly mustered, or offer himself falsly or deceitfully to be mustered.

To be committed to the House of Correction for ten Days.

Two Witnesses before the next Justice, and Certificate under the Hand of the Commissary of the Musters. Sect. 12.

Any Person, who shall wittingly or willingly lend or furnish any Horse to be mustered, which shall not truly belong to the Trooper or Troop so mustered.

The Horse so falsly mustered is forfeited to the Informer, if it belongs to the Person lending the same. If not, the Person lending forfeits 20 Pounds to the Informer.

Two Witnesses before the next Justice. Sect. 12.

To be levied by Order of the Court Marshal. Sect. 13.

In Default or Absence of Constables, Tythingmen, &c. to quarter and billet Officers and Soldiers in Inns, Livery-Stables, Alehouses, Victualling-houses, all Houses of Persons selling Brandy, strong Waters, and Cyder or *Metbeglin* by Retail, except Distillers and private Houses. Sect. 18.

Persons aggrieved by Constables, &c. quartering a greater Number of Soldiers, than they ought to bear in Proportion to their Neighbours, on Complaint one Justice may order such and so many of the Soldiers to be removed, and quartered upon such Person, as he shall see Cause, who is obliged to receive such Soldiers. Sect. 18.

Vide infra Sect. 33.

To order Constables by Warrant to provide Carriages with able Men to drive the same for Soldiers in their Marches. Sect. 29.

Note, Officers are to pay down in Hand to Constables, for the Use of the Person providing such Carriages and Men, *One Shilling* for every Mile any Waggon with five Horses shall travel; *One Shilling* for every Wain with six Oxen, or four Oxen and two Horses, and nine Pence for every Cart with four Horses, and in Proportion for less Carriages. *Ibid.*

And no Carriage is to carry above twenty hundred Weight. Sect. 33.

Constables, &c. who shall quarter any of the Wives, Children, or Maid-Servants of Officers and Soldiers against the Owner's Consent. Sect. 35.

Twenty Shillings to the Party grieved. To be levied by Distress, &c.

Officers and Soldiers without Leave of the Lord of the Manor under Hand and Seal, killing, taking or destroying any Hare, Coney, Pheasant, Partridge, Pigeon, or any other Sort of Fowls, Poultry, or Fish, or his Majesty's Game.

If an Officer, he forfeits five Pounds to the Poor where, &c.

One Witness. Sect. 36.

And twenty Shillings every Soldier, to be paid by the Officer commanding in Chief to Constable or Overseer of the Poor in two Days after Demand, on Forfeiture of his Commission.

To

To

A P P E N D I X.

Offences.

Officers and Soldiers.

Penalties.

To cause *wandering Soldiers* suspected of *Desertion* to be apprehended, and to examine them. And if by Confession, Oath of one Witness, or Knowledge of the Justice, he is found a listed Soldier, and ought to be with his Company. Sect. 38.

To convey him to the Gaol of the County or Place, and transmit an Account thereof to the Secretary at War for the Time being.

Note, There is a Reward of twenty Shillings for apprehending a Deserter, to be paid (by a Justice's Warrant) by the Collectors of the Land-Tax where apprehended. Sect. 39.

Persons harbouring or concealing *Deserters* knowingly, or buying, exchanging, or otherwise receiving from any Soldier or Deserter Arms, Cloths, Caps or other Furniture belonging to the King, or causing the Colour of their Cloths to be changed.

One Witness. Sect. 40.

Forfeit five Pounds, to be levied by Distress, &c.

One Moiety to the Informer, by whose Means such Deserter was apprehended.

The other to the Officer, to whom he belonged.

Commission-Officer forcibly entering into, or breaking open the Dwelling or Outhouses of any Person to search for *Deserters* not having a Justice's Warrant. Sect. 41.

Forfeits twenty Pounds.

High Constables and Beadles, &c. who shall receive, demand, contract or agree for any Sum of Money, or any Reward whatsoever, to excuse any from quartering Soldiers; or Victuallers refusing Soldiers quartered or billeted upon them.

Confession, or one Witness. Sect. 53.

Not less than 40 s. or above five Pounds for every Offence.

To be levied by Distress and Sale, by Warrant directed to some other Constable of that County, or Overseer, where the Offence is committed, to be paid the Overseers for the Use of the Poor.

May require and command by Warrant or Order under Hand and Seal High Constables, &c. who shall quarter or billet Soldiers, to give an Account in Writing of the Number of Officers and Soldiers quartered or billeted by them, and on whom, with the Streets and Signs where, the better to punish Abuses in Billetting, &c. Sect. 54.

Note, Justice's Power to discharge Soldiers arrested, is now vested in the Judges.

[Two] Military Officers quartering Soldiers otherwise than is limited and allowed by the said Act, or shall use or offer any Menace or Compulsion to any Mayors, Constables, &c. tending to deter them from performing their Duty, being thereof convicted on Oath of two Witnesses, are deemed, cashiered and disabled to have any military Employment in the Kingdom, provided such Conviction be affirmed at the next Quarter-Sessions, and a Certificate transmitted to the Judge-Advocate, and by him to the Court Marshal. Sect. 18.

No *Commissary* to muster any Regiment, Troop or Company in *Westminster* and *Southwark* or their Liberties, but in the Presence of two or more Justices (not Officers), unless such Justices on 48 Hours Notice to six Justices residing within the City and Liberties aforesaid respectively, shall neglect to attend such Muster. Sect. 25.

On Pain of being disabled and cashiered.

In Case of Neglect, *Commissary* may proceed to muster such Regiment, &c. provided Oath be made before a Justice within 48 Hours after such Muster taken, that such Notice was given to six Justices. *Ibid.*

Justices

APPENDIX.

Offences.

Officers and Soldiers.

Penalties.

Justices attending to sign Muster-Rolls, and to take Cognizance of the Muster, and to examine the Truth thereof before they sign the same. Sect. 25.

Note, Constables, &c. may billet the Officers and Soldiers of his Majesty's Foot-Guards in *Westminster* and Places adjacent. Sect. 26.

Military Officers forcing Waggon, &c. to travel more than one Day's Journey, not discharging them in due Time for their Return home, or shall suffer or connive at Soldiers, Servants, or Women (except the Sick) riding in Waggon, &c. or forcing any Constable by threatening or menacing Words to provide Saddle-Horses for themselves or Servants, or shall force Horses from their Owners. Sect. 29.

For every Offence 5 Pounds.

The Proof to be before Two Justices, who are to certify to the Paymaster General of his Majesty's Forces under Hand and Seal, who is to deduct it out of such Officer's Pay.

High Constables and Petty Constables not executing the Justice's Warrant for providing Carriages, or Persons appointed by them, refusing to provide Carriages and Men, or hindering the Execution of such Warrant. Sect. 30.

Forfeit for every Offence not exceeding 40s. nor less than 20s. to the Poor of the Place where.

To be levied by Distress, &c.

Commanding Officer wilfully neglecting or refusing upon Application to deliver up any Officer, Non-Commission Officer or Soldier, accused of any capital Crime, or of any Violence or Offence to the Civil Magistrate, or to aid and assist the Officers of Justice in apprehending such Offender.

To be cashiered and disabled to hold any military Employment, provided the Conviction be affirmed at the next Quarter-Sessions, and Certificate thereof be transmitted to the Judge-Advocate, and by him to the Court-Marshal.

Two Witnesses. Sect. 46.

[*Qu. Sess.*] Officers and Soldiers quartered and billeted, as aforesaid, to pay such reasonable Prices for all necessary Provisions to Owners of Inns, &c. as shall be appointed from Time to Time by the Justices at their General or Quarter Sessions of each County, City, &c. for one or more Nights. Sect. 19.

Upon Complaint to the next Quarter-Sessions of Officers, not giving Notice to Innkeepers, &c. of Subsistence-Money in their Hands, and not paying the same.

Two Witnesses. Sect. 24.

Sessions to certify the Sum due, and the Persons, to whom the same is owing, to the Paymaster of his Majesty's Guards and Garrisons, which if not paid, Officer is disabled, and to be cashiered.

From Time to Time to make Orders upon the *Treasurer of the County* for paying Constables, &c. such reasonable Sums by them laid out for Soldiers Carriages (without Fee or Reward) over and above what is received by them of the Officer requiring such Carriages. Sect. 32.

Note, The Sessions may raise Money for it, as for County-Gaols and Bridges. 12 Geo. c. 3.

Offences.

Orchards.

Penalties.

[*One*] Persons unlawfully cutting and taking Corn growing, robbing Orchards, and taking away any Fruit-Trees; breaking any Hedges, Pales, or other Fences, cutting or spoiling any Woods or Underwoods, standing and growing, or the like,

First Offence, To pay to the Person grieved such Damages as the Justice shall appoint. If he be thought not able to pay, to be committed to the Constable, to be whipp'd, and for every other Offence to be whipp'd.

APPENDIX

Offences.

Richards.

Penalties.

and the Accessories thereunto. Stat. 43 Eliz. c. 7. Sect. 1.

Confession, or one Witness.

Prosecution to be in Six Weeks, by 15 Car. 2. c. 2. which see (in Title *Wood*); it alters the Punishment.

The Constable refusing or neglecting to do his Duty, to be committed till he does.

In the Justice's own Case, he is to associate one or more Justices.

Offences.

Panel of Juries.

Penalties.

[Du. Sess.] Justices before whom Panels of Juries are returned by the Sheriff, to enquire for the King, *Quorum* 1. may reform such Panels, and the Sheriff must return the Panel so reformed, on the Penalty of 20 Pounds, to be divided between the King and the Prosecutor. Stat. 3 H. 8. c. 12. Sect. 6.

Offences.

Papists and Popish Superstition.

Penalties.

(*Agnus Dei, &c.*)

[One] Persons bringing into any of the Queen's Dominions any *Agnus Dei*, Crosses, Pictures, Beads, or any such vain or superstitious Thing; or delivering, or offering the same to any Person to be used. Stat. 13 Eliz. c. 2. Sect. 7.

A *Præmunire*. A Justice may receive Notice hereof, and is to disclose the same to the Privy Council in 14 Days after, in Pain of a *Præmunire*.

[Du. Sess.] Persons receiving any *Agnus Dei*, Crosses, Pictures, Beads, &c. Stat. 13 Eliz. c. 2. Sect. 17. 23 Eliz. c. 1. Sect. 2.

A *Præmunire*.

(*Arms and Horses.*)

[One] A Popish Recusant refusing to declare what *Armour* or *Munition* he hath, or to deliver it to such Person as hath Power to seize it. Stat. 3 Jac. 1. c. 5. Sect. 28.

Forfeits the same, and shall be imprisoned, by Warrant, for Three Months, without Bail.

[Two] Papist, or reputed Papist, refusing to make the Declaration in 30 Car. 2. c. 1. or neglecting to appear before Two Justices, upon Notice. Stat. 1 W. & M. Sess. 1. c. 15. Sect. 4, 5.

His Arms, Weapons, Gunpowder, or Ammunition, to be seized, by Warrant, to the Use of the Crown, to be delivered at the next Quarter-Sessions, in open Court.

If he does not discover his Arms, or hinders Search for them, to be committed for Three Months without Bail, forfeits his Arms, and to pay treble Value, to be set at next Quarter-Sessions.

Persons concealing, or privy to concealing Arms of Papists, or reputed Papists; or hindring Search for, and Seizing the same. Stat. 1 W. & M. Sess. 1. c. 15. Sect. 6.

To be committed to the common Gaol for Three Months, without Bail, and forfeit treble the Value of the Arms.

Papists concealing, or Aiders in concealing Horses of Papists, or reputed Papists. Stat. 1 W. & M. c. 15. Sect. 10.

To be committed for Three Months, without Bail, and forfeit the treble Value of the Horses.

[Four] To take away from a Popish Recusant convict, all his *Armour*, *Gunpowder* and *Munition*, but what they allow him. Stat. 3 Jac. 1. c. 5. Sect. 27.

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APPENDIX

<i>Offences.</i>	Popists and Popish Superstition.	<i>Penalties.</i>
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(Books and Relicks.)

[Two] To search the Houses and Lodgings of Popish Recusants convict, and of every Person whose Wife is a Popish Recusant convict, for Popish Books and Relicks. Stat. 3 Jac. 1. c. 5. Sect. 26.	The Books and Relicks are to be burnt and defaced.
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(Crucifix.)

[Du. Sess.] A Crucifix, or other Popish Relick, of any Price. Stat. 3 Jac. 1. c. 5. Sect. 26.	To be defaced in open Sessions, and then returned to the Owner.
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(Feme Coverts.)

[Two] Feme Coverts being convicted Recusants (under Peerage) not conforming within Three Months after Conviction. Stat. 7 Jac. 1. c. 6. Sect. 28. Quorum 1.	To be committed till they conform, unless their Husbands pay 10 s. a Month to the King, or the Third Part of his Lands.
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Vide Titles Abjuration and Church.

(Jesuit and Priest.)

[One] To take an Information of a Jesuit or Priest's remaining in any of the Queen's Dominions, and in 28 Days to disclose it to some of the Privy Council, or forfeits, Stat. 27 Eliz. c. 2. Sect. 13.	Two hundred Marks.
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(Impugning Supremacy.)

[One] Persons above 16 absenting from Church above one Month, impugning the Queen's Authority in Causes Ecclesiastical, or frequenting <i>Conventicles</i>, or perswading others so to do, under Pretence of Exercise of Religion. Stat. 35 Eliz. c. 4. Sect. 1. This is not to be extended to Protestant Dissenters, by Stat. 1 W. & M. Sess. 1. c. 18.	To be committed till they conform themselves, and make Submission. He may require them to conform and submit; and if they refuse, they must abjure the Realm in open Assize or Sessions.
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(Licence.)

[Four] To licence a Popish Recusant to go about his necessary Occasions, with the Assent in Writing of the Bishop, Lord Lieutenant, or Deputy Lieutenant, upon Oath of the true Reason of his Journey, and that he will make no causeless Stays. Stat. 3 Jac. 1. c. 5. Sect. 7.	
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(Maintaining the Pope's Jurisdiction.)

[Two] Persons who maintain the Jurisdiction of the Bishop, or See of Rome, and their Accessaries. Stat. 5 Eliz. c. 1.	Incur a <i>Præmunire</i>, which Two Justices are to hear and determine, and certify their Presentments into the Queen's Bench, if in Term-time, within 40 Days; if not, the first Day of the next Term, on Pain of 100 l. Quorum 1.
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[Du. Sess.] Persons affirming or maintaining the Power or Jurisdiction of any foreign Prelate or Potentate within the Queen's Dominions. Stat. 5 Eliz. c. 1. Sect. 2. 23 Eliz. c. 1. Sect. 2.

The Prosecution to be in 12 Months; but if by Preaching, Teaching, or Words only, in Six Months.

Two, or more Witnesses.

First Offence, Forfeiture of all Goods and Chattels; and if not worth 20 l. at the Time of Conviction, all, and one Year's Imprisonment, without Bail.

Second Offence, *Præmunire*.

APPENDIX

Offences.

Papists and Popish Superstition.

Penalties:

(Maintaining the Pope's Jurisdiction.)

The Statute of 5 Eliz. c. 1. against maintaining the Pope's Jurisdiction, is to be openly read by the Clerk of the Peace every Quarter-Sessions. Stat. 5 Eliz. c. 1. Sect. 15.

The Comforters and Maintainers of such as obtain, or put in Use any Bull of Absolution or Reconciliation from the Bishop of Rome, or absolve, or be absolved thereby. Stat. 13 Eliz. c. 2. Sect. 4. 23 Eliz. c. 1. Sect. 2.

A *Præmunire*, unless within 6 Weeks they discover them to some of the Privy Council.

(Mafs.)

Saying or finging Mafs. Stat. 23 Eliz. c. 1. Sect. 4.

200 Marks, and one Year's Imprisonment, and not to be enlarged till the Fine be paid. Two Thirds to the Queen, one to her own Use, the other for the Poor, the Third to the Prosecutor.

Hearing Mafs. Stat. 23 Eliz. c. 1. Sect. 4.

100 Marks, and one Year's Imprisonment, the Fine to be divided, *ut supra*.

(Oath of Allegiance.)

[One] May require *Dissenting Teachers*, Preaching in any Congregation in such Counties where they have not qualified themselves, as the Toleration-Act directs, to take the Oath and Declaration of Allegiance and Fidelity. Stat. 10 Ann. c. 2. Sect. 9.

[Two] To tender the Oath of Allegiance to any Persons of 18, or above, convicted or indicted of Recusancy, who have not received the Sacrament twice in the Year next before, and to certify the Name and Dwelling of Persons taking the Oath, to the next Sessions, to be recorded by the Clerk of the Peace, or Town-Clerk. Stat. 3 Jac. 1. c. 4. Sect. 13.

Note, This extends not to Noblemen or Noblewomen.

Jointly or severally, to administer the Oaths of Allegiance and Supremacy to any Person reconciled to the Church of Rome, and returning into the Realm, to be certified the next Sessions, on the Penalty of 40 l. If such Person takes the Oaths, in Six Days after he shall return, he shall not be prosecuted for the Treason. Stat. 3 Jac. 1. c. 4. Sect. 24.

To administer the Oath of Allegiance to any Person of the Age of 18, or above, and not a Peer. Stat. 7 Jac. 1. c. 6. Sect. 26. *Quorum* 1.

To administer the Oaths of Allegiance and Supremacy to Foreigners, who shall use for 5 Years the Trades of Breaking, Hickling, or Dressing Hemp or Flax; and of making and whitening Thread; and spinning, weaving, making, whitening or bleaching Cloth made of Hemp or Flax only; and making Twine or Nets for Fishery; or storing Cordage, or making Tapestry Hangings. Stat. 15 Car. 2. c. 15. Sect. 3.

To take the Oath and Declaration of Allegiance and Fidelity of *Dissenters*, prosecuted contrary to 1 W. & M. c. 18. (and solemn Affirmation and Declaration of *Quakers*) and their Subscription to the Confession of the Christian Faith, and to certify the same to the Sessions. Stat. 10 Ann. c. 2. Sect. 8.

To administer and tender the Oaths directed by 1 Geo. c. 13. to be taken, to Persons whom they shall suspect to be dangerous or disaffected to his Majesty or his Government. On Neglect or Refusal, Stat. 1 Geo. c. 13. Sect. 11.

To certify the Refusal to the Quarter-Sessions, to be recorded, and from thence to be certified by the Clerk of the Peace into Chancery or King's Bench.

Person so refusing or neglecting, is a Popish Recusant convict, and forfeits as such.

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APPENDIX.

Offences.

Papists and Popish Superstition.

Penalties.

(Oath of Allegiance.)

May summon any Person to appear at a Day and Place, to take the Oaths directed by 1 Geo. c. 13. And on Oath made that the Summons was left at his House, and the Party not appearing, Stat. 1 Geo. c. 13. Sect. 12.

To certify the Default to the Sessions; and if he neglects or refuses to take the Oaths at the Session; his Name to be proclaimed at the first Meeting of the Sessions. Then to be adjudged a Popish Recusant convict, and this to be certified, *ut supra*.

No Manors, Lands, &c. to be sold or bequeathed by Papists, &c. refusing to take the Oaths by any Deed or Will, unless such Deed within 6 Months after the Date; and such Will within 6 Months after the Testator's Death, be inrolled in one of the Courts of Record at *Westminster*, or by the *Custos Rotulorum*, and Two Justices, and the Clerk of the Peace, or Two of them at the least, whereof the Clerk of the Peace to be one. Stat. 3 Geo. c. 18. Sect. 6.

Note, No Action or Suit for the Penalties or Forfeitures, by 1 Geo. c. 13. or 3 Geo. c. 18. for wilfully neglecting or refusing to register, to be commenced or brought after Two Years. Stat. 3 Geo. c. 18. Sect. 2.

[*Qu. Sess.*] A Papist of the Age of 21 Years, having an Estate in Lands, and not taking the Oaths, and also repeating and subscribing the Declaration 13 Car. 2. at the Quarter-Sessions, or Courts at *Westminster*, between the Hours of Nine and Twelve in the Forenoon; or in Default thereof not registering his Name and Lands, &c. *what Estate he has in them, the yearly Rents, &c.* within 6 Months, and not subscribing such Register in Presence of Two Justices in open Sessions, or by Warrant of Attorney, under Hand and Seal executed in the Presence of Two Witnesses, who are to make Proof thereof at the Sessions, upon Oath. On Neglect or Refusal,

Forfeits the Fee-simple of his Land, not registred, or fraudulently registred, and the full Value of other Lands, whereof he has not the Fee-simple.

Two Thirds thereof to the Crown, and the other to any Protestant that will sue.

Two of the Justices then present to sign as Witnesses to such Entry. Stat. 1 Geo. c. 55. Sect. 1.

In Default, each forfeits 20 Pounds to the King.

All Officers Civil and Military, Ecclesiastical Persons, Heads of Colleges, &c. Sergeants at Law, Counsellors, Attornies, Solicitors, &c. practising in Courts, are within 3 Months to take the Oaths at Quarter-Sessions, or one of the Courts at *Westminster*. Stat. 1 Geo. c. 13. Sect. 3 & 9.

Neglecting are disabled to execute any Offices or Employments, or to sue any Action, or to be a Guardian, Executor or Administrator, not capable of any Legacy, or voting for a Member of Parliament, and forfeit 500 l. to be recovered by Action of Debt, &c. to the Person who sues for the same.

(Reconciler and Reconciled.)

[*One*] Aiders and Maintainers of Persons reconciling and reconciled to the *Romish* Religion, if they do not in 20 Days discover the Reconciling and Reconciled to a Justice or higher Officer. Stat. 23 Eliz. c. 8. Sect. 3.

Misprision of Treason.

(Recusancy.)

[*Qu. Sess.*] A Recusant, who conforms, not receiving the Sacrament within a Year after,

For the first Year, 20 l. for the second 40 l. and every Default after 60 l. And if after he hath received it, he make Default therein

APPENDIX

Offences.

Papists and Popish Superstition.

Penalties.

(Recusancy.)

after, and so once every Year at the least.
Stat. 3 Jac. 1. c. 4. Sect. 3.

therein by the Space of a Year, 60*l.* to be divided between the King and Prosecutor.

The Church-wardens and Constables of every Parish, or one of them, or (if there be none such) then the High Constable of the Hundred there, not presenting once every Year at the Quarter-Sessions, the monthly Absence from Church of every Popish Recusant, and their Children, being 9 Years of Age, and their Servants with the Childrens Age, as near as they can know them. Stat. 3 Jac. 1. c. 4. Sect. 4.

20*s.* for every Default. The Clerk of the Peace to record it on 40*s.* Penalty. If upon such Presentment (being the first) the Recusant be convicted, the Officer who presents him, shall have 40*s.* to be levied on the Recusant's Goods and Estate, by Warrant, as the Justices shall think fit.

To cause Proclamation to be made, that Popish Recusants shall render themselves to the Sheriff, or Bailiff of the Liberty, where they are before the next Assize, Gaol-Delivery, or Sessions respectively. If they do not, the Default being recorded, shall be taken as a sufficient Conviction. Stat. 3 Jac. 1. c. 4. Sect. 7.

Every Conviction of a Popish Recusant is, before the End of the Term next following, to be certified into the Exchequer, in such Certainty, that Process may issue. Stat. 3 Jac. 1. c. 4. Sect. 9.

Note, No Indictment against a Recusant shall be reversed for Want of Form, other than by direct Traverse to the Point of not coming to Church, or not receiving the Sacrament. Stat. 3 Jac. 1. c. 4. Sect. 16.

(Reputed Papists.)

[One] Justice of London, Westminster and Southwark, and of the Counties of Middlesex, Surrey, Kent and Sussex, to cause to be brought before him every Person (not being a Merchant Foreigner within the Cities of London and Westminster) or within 10 Miles of the same, as are reputed to be Papists, and tender them the Declaration mentioned in the Statute 30 Car. 2. intituled, *An Act for more effectual preserving the King's Person and Government, &c.* Stat. 1 W. & M. Sess. 1. c. 9. Sect. 1.

Every such Person after Refusal to make and subscribe the same, who shall continue to be within the said City or Cities, or within 10 Miles of the same, he or she shall forfeit or suffer as a Popish Recusant convicted.

Justices of Essex have like Jurisdiction by Stat. 1 W. & M. Sess. 1. c. 17. Sect. 1.

Offences.

Parliament.

Penalties.

Three Justices may consent to, and have Power to order a Petition to the King or Parliament. Stat. 13 Car. 2. c. 5.

Persons endeavouring to procure above Twenty Hands to any Petition to the King or Parliament, for any Alterations in the Church or State, unless by Consent of Three or more Justices, the Grand Jury at the Assizes, &c. and repairing to the King, &c. to deliver it, with above Ten Persons. Stat. 13 Car. 2. c. 5.

Forfeit a Sum not exceeding 100*l.* and to be imprisoned for Three Months.

5 R

[Two]

APPENDIX.

Offences.

Parliament.

Penalties.

[Two] To administer the Oaths to Candidates to serve after the Determination of this present Parliament, for County, City, Borough, or Cinque-port in *England, Wales, or Berwick upon Tweed*. He who stands for the County, that he has 600*l.* per annum of or in Lands, Tenements, or Hereditaments, above Reprizes; and for City, Borough, or Cinque-port, of 300*l.* per annum above Reprizes. Stat. 8 *Ann.*

Offences.

Partition of Land.

Penalties.

[Three] TO be present at the Under-Sheriff's Executing a Writ of Partition, when the High Sheriffs, by Reason of Distance, Infirmary, or any other Hindrance, cannot be present. Stat. 8 & 9 *W. 3. c. 31. Sect. 4.*

Offences.

Perjury.

Penalties.

[Qu. Sess.] ONE who commits wilful Perjury. Stat. 5 *Eliz. c. 9. Sect. 4.*

Forfeits 20*l.* and shall suffer 6 Months Imprisonment without Bail, and is disabled to give Evidence until the Judgment be reversed.

If he be not able to pay the Fine, to be set in the Pillory in the publick Market, and his Ears to be nailed.

Note, One Justice may bind the Offender over to Sessions.

Offences.

Physicians.

Penalties.

[One] TO assist the President, and all Persons authorized by the College of Physicians, for the due Execution of the several Acts of Parliament, which concern the said College. Stat. 1 *Mar. Parl. 1 Sess. 2. c. 9. Sect. 6.*

Offences.

Pilchards.

Penalties.

[One] SUSPICIOUS Persons, flocking together about the Boats, Nets and Cellars, belonging to the Pilchard Craft upon the Coast of *Cornwall and Devon*, being warned to be gone, and refusing. Stat. 13 & 14 *Car. 2. c. 28. Sect. 5.*

Five Shillings to the Poor, or to be set in the Stocks.

Warning to be by the Company, or Owner of the Boats and Cellars.

Masters of Vessels, &c. importing Pilchards, Herrings, Salmon, &c. or selling the same in *England*, taken by Foreigners (except Protestants dwelling here). Stat. 1 *Geo.* Oath of two credible Witnesses.

Twenty Pounds to be levied by Distress, one Moiety to the Poor, the other to the Informer.

For want of a Distress the Offender to be committed to the common Gaol for a Twelve-month.

Offences.

Plague.

Penalties.

[One] TO command any Person infected with the Plague, residing in an infected House, not to go out; and if he does

The Watchman may resist him; and if any Hurt happen thereupon, the Watchman shall not be impeached for the same.

APPENDIX.

Offences.	Plague.	Penalties.
does afterwards go out. Stat. 1 Jac. 1. c. 31. Sect. 7.		
If any Person being infected with the Plague, who has no Sore upon him, go abroad, and converse in Company. Stat. 1 Jac. 1. c. 31. Sect. 7.		To be openly whipped as a Vagabond, according to Stat. 39 Eliz. c. 4.
[Two] The Mayor, Bailiffs, Head-Officers and Justices of Peace; and where there are none, two Justices of the County may tax the Inhabitants towards Relief of such as have the Plague. Stat. 1 Jac. 1. c. 31. Sect. 2.		To be levied by Distress and Sale; and upon Refusal, to be committed till Payment.
These Taxes to be certified to the Quarter-Sessions. Vide Quarantine.		

Offences.	Poor.	Penalties.
	(Badge.)	
[One] Every Person receiving Relief of any Parish or Place, and the Wife and Children of any such Person, cohabiting in the same House (except one Child to attend an impotent or helpless Parent) refusing or neglecting to wear their Badge, in an open and visible Manner. Stat. 8 & 9 W. 3. c. 30. Sect. 2. Upon Complaint.		His or her Allowance to be abridged, or withdrawn, or to be committed to the House of Correction to be whipped, and kept to hard Labour, not exceeding 21 Days.
Church-wardens, or Overseers, relieving any such Poor, not having and wearing such Badge. Stat. 8 & 9 W. 3. c. 30. Sect. 2. One, or more Witnesses.		Twenty Shillings to be levied by Distress and Sale. One Moiety to the Informer, the other to the Poor.

Boys bound to Sea. Vide Apprentice.

	(Costs.)
[One] Where Costs are given upon an Appeal, from an Order of Settlement of the Poor determined, or where Notice was given, and the Person, ordered to pay such Costs, dwells out of the Jurisdiction of the Court, which gave the Costs. Stat. 8 & 9 W. 3. c. 30. Sect. 3. Upon Request, and producing a true Copy of the Order for Costs, on Oath of one Witness.	The Costs to be levied by Warrant of one Justice of the County, where the Party dwells, who is to pay the Costs, by Distress and Sale; and for Want, to be committed to the common Gaol for 20 Days.

(Father, &c. to maintain poor Children.)

[Qu. Sect.] Father, Grandfather, Mother, Grandmother, and Children of Poor who cannot work, to be assessed towards their Relief. Stat. 43 Eliz. c. 2. Sect. 7.

(Overseers.)

[Two] The Church-wardens, and four, three or two Householders of every Parish (according to the Greatness of the Parish) to be nominated in *Easter-Week*, or in a Month after, under their Hands and Seals, are Overseers of the Poor. Stat. 43 Eliz. c. 2. Sect. 1. Quor. 1.

Overseers

Twenty

A P P E N D I X.

Offences.	Poor.	Penalties.
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(Overseers.)

<i>Overseers of the Poor</i>, not meeting once a Month in the Church upon Sunday after Evening Prayer. Stat. 43 <i>Eliz. c. 2. Sect. 2. Quor. 1.</i>	Twenty Shillings to the Use of the Poor, to be levied by Distress and Sale.
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To allow of the *Overseers* Excuse, for not meeting once a Month, or not, as they see Cause. Stat. 43 *Eliz. c. 2. Sect. 2. Quor. 1.*

<i>Overseers</i> not accounting in 4 Days after the End of their Year. Stat. 43 <i>Eliz. c. 2. Sect. 2. Quor. 1.</i>	To be committed without Bail, till they account.
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May upon Application by Warrant or Order authorize the Church-wardens or *Overseers* of the Poor, where any Wife, Child, &c. is left to the Parish, to seize so much of the Husband, Father or Mother's Goods, Chattels, Rents, &c. as may discharge the Parish, and provide for such Wife, Child, &c. Stat. 5 *Geo. c. 8. Sect. 1.*

[*Du. Sess.*] If such Warrant of two Justices be confirmed at the next Sessions, the Sessions may order the Church-wardens or *Overseers* to sell the Goods, &c. or receive the Rents, &c. as shall be necessary to discharge the Parish, &c. And they to account at the Sessions for what Money they receive on such Warrant. Stat. 5 *Geo. c. 8. Sect. 1 & 2.*

(Rates)

[*Tro*] To consent to the setting poor People to work; to the raising by Taxation a convenient Stock to work upon; and also Monies for relieving the Aged and Impotent, and putting forth Apprentices. Stat. 43 *Eliz. c. 2. Sect. 1. Quor. 1.*

Parson, and all Inhabitants who are able, are taxable to the Relief of the Poor. Stat. 43 <i>Eliz. c. 2. Sect. 1. Quor. 1.</i>	Such Tax is to be levied by Distress and Sale of Goods, and in Default to be committed without Bail, till it be discharged.
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Where any Parish is not able to relieve themselves, may tax other Parishes and Places, and the Hundred, if need be. Stat. 43 *Eliz. c. 2. Sect. 3. Quor. 1.*

The Rates set upon every Parish, at <i>Easter-Sessions</i>. Stat. 43 <i>Eliz. c. 2. Sect. 13. Quor. 1.</i>	To be levied by Distress and Sale, and Commitment, <i>ut supra.</i>
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The Constable not paying the Monies rated at <i>Easter-Sessions</i>, to the High Constable. Stat. 43 <i>Eliz. c. 2. Quor. 1.</i>	Ten Shillings to be levied by Distress and Sale of Goods, and in Default, to be committed without Bail, till it be discharged.
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The High Constable not paying the Monies above mentioned to the Treasurers. Stat. 43 <i>Eliz. c. 2. Quor. 1.</i>	Twenty Shillings to be levied, <i>ut supra.</i>
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[*Du. Sess.*] To tax every Parish in the County, not above 6 *d.* or 8 *d.* a Week for every Parish, towards Relief of *Prisoners* in the Common Gaol; to be levied by the Church-wardens, and paid to the High Constables, and the High Constables to pay it to the Collector appointed by the Justices, upon the Penalty of 5 *l.* a-piece. Stat. 14 *Eliz. c. 5. Sect. 2.*

To provide a Stock to set poor *Prisoners* committed for Felony, and other Misdemeanours, to work, in such Manner as other County-Charges are levied; and to appoint *Overseers*, and order their Accounts, and punish Abuses. No Parish to be rated above 6 *d.* a Week. Stat. 19 *Car. 2. c. 4. Sect. 1.*

A P P E N D I X.

Offences.

Poor.
(Rates.)

Penalties.

Where the whole Hundred is not able to relieve the Poor, the Justices, in Sessions may tax the County in Part, or in Whole, at their Discretions. Stat. 43 Eliz. c. 2. Sect. 3.

At Easter-Sessions, yearly to rate every Parish at a certain Sum, to be paid weekly: No Parish to pay more than 6 d. nor less than a Halfpenny, towards Relief of poor Prisoners in the Queen's Bench, Marshalsea, Hospitals and Alms-houses in their Jurisdictions, every one respectively, to receive out of every County 20 s. yearly. Stat. 43 Eliz. c. 2. Sect. 14.

(Refusing to work.)

[Two] Such Persons as refuse to work.
Stat. 43 Eliz. c. 2. Sect. 4. Quor. 1.

To be sent to the House of Correction.
One Justice may do this, as well as two.

(Registering Notice.)

[One] Church-wardens and Overseers, refusing to register Notice of poor Persons coming into a Parish, and not reading, or causing to be read such Notice. Stat. 3 &

Forty Shillings, to be levied by Distress and Sale; and for Want to be committed for a Month.

4 W. & M. c. 11. Sect. 5.

Two Witnesses upon Oath.

(Setting them to work.)

[One] Where there is but one Justice of the Peace, he may consent to the Church-wardens and Overseers of the Poors setting up, using and occupying any Trade, Mystery or Occupation, only for the setting on Work, and better Relief of the Poor of the Parish where they bear Office. Stat. 3 Car. 1. c. 4. Sect. 22.

(Settlement and Removal.)

[One] Complaint is to be made to one Justice, by the Church-wardens or Overseers of the Poor, within 40 Days, of Persons likely to become chargeable to the Parish, who come to settle in a Tenement under 10 l. per ann. Stat. 13 & 14 Car. 2. c. 12. Sect. 1

Note, The Stat. 13 & 14 Car. 2. c. 12. is now made perpetual by 12 Anne, Sess. 1. c. 18. Sect. 1.

Persons returning to the Parish whence they were removed. Stat. 13 & 14 Car. 2. c. 12. Sect. 3.

To be sent to the House of Correction.

Church-wardens or Overseers refusing to receive any Person removed, and to provide for them. Stat. 13 and 14 Car. 2. c. 12. Sect. 3.

To be bound to the Assizes or Sessions, to be indicted for their Contempt.

Church-wardens or Overseers, refusing to receive any Person removed by two Justices. Stat. 3 & 4 W. & M. c. 11. Sect. 10.

Two Witnesses upon Oath.

Five Pounds for the Poor of the Parish, from which he shall be removed, to be levied by Distress and Sale: For Want, to be committed for forty Days. The Warrant, by the Justice of the Place to which the Removal is directed, to the Constable where the Offender dwells.

[Two] Where any Poor come to settle in any Tenement under 10 l. per annum, they may remove such Person, who is likely to be chargeable to such Parish where he or they were last legally settled, either as a Native, Householder, Sojourner, Apprentice or Servant,

APPENDIX

Offences.

Poor.

Penalties.

(Settlement and Removal.)

vant, for the Space of 40 Days at least, unless Security be given to discharge the Parish, to be allowed by the Justices. An Appeal lies to the next Quarter-Sessions.

Stat. 13 & 14 Car. 2 c. 12. Sect. 1, 2

1 Jac. 2 c. 17. Sect. 3.

3 & 4 W. & M. c. 11. Sect. 3.

12 Ann. Sess. 1. c. 18. Sect. 2. Quor. 1.

To allow Certificates under the Hands and Seals of the Church-wardens or Overseers of the Poor, attested by two or more Witnesses, owning the Person mentioned in the Certificate to be an Inhabitant legally settled, which Certificate is not good without their Allowance. Stat. 8 & 9 W. 3. c. 30. Sect. 1.

But if the Person, who hath such Certificate, rents 10*l.* per annum, or bears an Office in any other Parish afterwards, that will gain a Settlement in that Parish, notwithstanding such Certificate. Stat. 9 & 10 W. 3. c. 11. Sect. 1.

And Note, Persons removing to other Parishes by Virtue of such Certificates, and taking Apprentices, or hiring Servants there, such Apprentices or Servants do not thereby acquire any legal Settlement in such Parishes. Stat. 12 Ann. Sess. 1. c. 18. Sect. 2.

[Qu. Sess.] Upon an Appeal concerning the Settlement of the Poor, or upon Proof of Notice given of an Appeal, (though the Appeal was not afterwards prosecuted) to award reasonable Costs to the Party, for whom such Notice had been given. Stat. 8 & 9 W. 3. c. 30. Sect. 3.

Appeals against an Order for the Removal of poor Persons, to be heard and determined at the Quarter-Sessions in the County where the Place is, from whence such Person is removed, and not elsewhere Stat. 8 & 9 W. 3. c. 30. Sect. 6.

See this Statute explained by the 12 Anna, Sess. 1. c. 18. *antea*.

Penalties.

Post and Postmaster.

Offences.

[One] NO Person or Persons after the 1st of June, 1711. shall be capable of having, using or exercising the Office of Post-Master General, or any Part thereof, or any other Employment relating to the Post-Office or any Branch thereof, or be any Way concerned in receiving, sorting or delivering Letters or Packets, unless such Person shall have taken the Oath prescribed before one Justice for the County or Place where such Person resides. Stat. 9 Anna. c. 10. Sect. 41.

[Two] Postmaster General, or any other Officer relating to the Post-Office, not taking the Oaths of Allegiance and Supremacy before two Justices of the County, where they are resident. Stat. 12 Car. 2. c. 35. Sect. 13.

Not capable to hold.

All Sums not exceeding 5*l.* due for Postage of Letters, to be recovered before them in the same Manner, and under the same Rates, as small Tithes are. See Title *Tithes*, where you will see how small Tithes are to be recovered. Stat. 9 Ann. c. 10. Sect. 30.

Bill of Exchange wrote on one and the same Piece of Paper with a Letter, and Letters to several and distinct Persons wrote upon one and the same Piece of Paper, to be rated by the Postmaster General, and to pay as so many several and distinct Letters, according to the Rates mentioned in the Stat. 9 Ann. c. 10. Stat. 6 Geo. c. 21. Sect. 50.

To be recovered as small Tithes are by 7 & 8 W. 3. c. 6.

[One]

To

APPENDIX.

Offences.	Preachers.	Penalties.
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[One] A Disturber of a Preacher lawfully licensed. Stat. 1 Mar. Sess. 2. c. 3. Sect. 5. Vide 10 Ann. c. 7.	To be committed.	
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[Two.] Disturbers of Preachers lawfully licensed. Stat. 1 Mar. Sess. 2. c. 3. Sect. 6. Vide Title Church, touching Preachers in Scotland.	In six Days after Commitment by a single Justice, he and one other are to examine the Fact, and if they find Cause, to commit him to the common Gaol for 3 Months, and thence to the next Quarter-Sessions.	
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[Qu. Sess.] If a Disturber of a Preacher lawfully licensed, who has been committed to the County-Gaol by two Justices, shall at the Sessions be reconciled, and enter into Bond for his good Behaviour for a Year, he shall be discharged; but if he persists in his Obstinacy, he is to be committed without Bail, till he be reconciled, and be penitent for his Offence. Stat. 1 Mar. Sess. 2. c. 3. Sect. 6.

He that rescues a Disturber of a licensed Preacher. Stat. 1 Mar. Sess. 2. c. 3. Sect. 7.	To be imprisoned and fined 5 £.	
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The Inhabitants of a Town, who suffer a Disturber of a licensed Preacher to escape. Stat. 1 Mar. Sess. 2. c. 3. Sect. 8.	Five Pounds.	
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Offences.	Process.	Penalties.
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[One] TO commit to the County-Gaol, without Bail or Mainprize, till the next Assizes, Sessions of Oyer and Terminer, and general Gaol-Delivery, Persons opposing or resisting any Officer, or Officers, or any aiding and assisting in the Execution of any Process in White-Fryars, Savoy, Salisbury-Court, Ram-Alley, Mitre-Court, Fuller's Rents, Baldwin's Gardens, Montague-Close, or the Minorities, Mint, Chink, or Deadman's Place. Stat. 8 & 9 W. 3. c. 27. Sect. 15.

Offences.	Prophecies.	Penalties.
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[Qu. Sess.] Publisher or Setter forth of any fantastical, or false Prophecy, with an Intent to raise Sedition. Stat. 5 Eliz. c. 15. Sect. 2, 3. Prosecution to be within six Months.	First Offence 10 £. and one Year's Imprisonment. Second, forfeits all his Goods, and Imprisonment during his Life. The Forfeitures to be divided between the Queen and the Prosecutor.	
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Offences.	Purveyors.	Penalties.
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[One] Persons making Purveyance, or impressing Carriages, or other Things, by Colour of any Warrant under the Great Seal, or otherwise. Stat. 12 Car. 2. c. 24. Sect. 16. At the Request of the Party grieved.	To be committed to Gaol till next Sessions.	
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[Two] Purveyor, Badger, &c. bargaining for any Victual or Grain, in the Markets of Oxford or Cambridge, or in five Miles of them. Stat. 2 & 3 P. & M. c. 15. Sect. 2. 13 Eliz. c. 21.	Quadruple the Value thereof, and three Months Imprisonment without Bail. Except when the Queen is there, or within seven Miles.	[One]
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A P P E N D I X.

Offences.

Quakers.

Penalties.

[One] Instead of the Declaration of Fidelity appointed to be made and subscribed by Quakers by 1 W. & M. c. 18. they are to make and subscribe the Declaration of Fidelity, mentioned in 8 Geo. c. 6.

And instead of the solemn Affirmation or Declaration prescribed by 7 & 8 W. 3. c. 34. they are to make the solemn Declaration or Affirmation following:

I A. B. do solemnly, sincerely, and truly declare and affirm.

And instead of the Form prescribed by 1 W. & W. c. 18. for the Effect of the Abjuration Oath, they are to take that mentioned in 8 Geo. c. 6.

Note. All Persons authorized to administer or tender either the said former Declaration, or the said solemn Affirmation or Declaration, or the said Effect of the Abjuration-Oath aforesaid, are authorized and required to administer and tender the same respectively to Quakers in the Words appointed by the Stat. 8 Geo. c. 6. Sect. 4.

If any Quaker, making such Affirmation or Declaration, shall be lawfully convicted of wilfully, falsely and corruptly affirming or declaring any Matter or Thing, which if sworn in the common or usual Form, would have amounted to wilful and corrupt Perjury. 8 Geo. c. 6. Sect. 5.

Offender to suffer such and the same Pains, Penalties and Forfeitures as are against Persons convicted of wilful and corrupt Perjury.

Note. Quakers or reputed Quakers are disabled to give Evidence in any criminal Cause, to serve on a Jury, or bear Office or Place in the Government, by 7 & 8 W. 3. c. 34. And 8 Geo. c. 6. Sect. 6.

Offences.

Quarentine.

Penalties.

[One] Commander, Master, or other Person having Charge of any Ship or Vessel, coming from any Place visited with the Plague, or having any Person on Board actually infected, not discovering the same, such Commander, &c. are, Stat. 7 Geo. c. 3. Sess. 1. Sect. 2.

Guilty of Felony, without Benefit of Clergy.

Persons not infected nor liable to Quarentine, who shall enter any Ship, &c. so appointed, *ut supra*, whilst any Person infected or under Quarentine shall be therein, are not to return without a proper Licence, but must perform their Quarentine: And if such Person shall actually escape, before they have fully performed their Quarentine. Stat. 7 Geo. c. 3. Sess. 1. Sect. 8.

Felony, *ut supra*.

Watchmen appointed by Order of two Justices, when any Town, &c. is infected, neglecting or refusing to keep such Watch, or to procure some able and sufficient Person in his Stead.

One or more credible Witnesses. *Ibid.* Sect. 10.

Watch-

Forfeit any Sum not exceeding 100*l.* nor less than 10*l.*

One Moiety to the Informer, the other to the Poor where Offence committed.

To be levied by Distress and Sale of the Offender's Goods.

And to be committed to Prison without Bail or Mainprize for two Months, and till Payment of the Sum adjudged. Liable

A P P E N D I X

Offences.

Quarentine.

Penalties.

Watchmen appointed, *ut supra*, who shall be guilty of any Breach or Neglect of their Duty. *Ibid.* Sect. 10.

Liable to the same Penalties, *ut supra*.

Upon the Oaths of the Master or Person having the Charge of any Ship, obliged to perform Quarentine, and of two of the Persons belonging to such Ship or Vessel, or two credible Witnesses, that such Ship, &c. and all and every Person and Persons have duly performed Quarentine, and are free from Infection: To give a Certificate thereof; after which such Ship, &c. are liable to no farther Restraint. *Ibid.* Sect. 14.

Note, In any Inland Place the Certificate must be signed by two Justices.

No more than one Shilling is to be taken for the Oath and Certificate over and above the Stamp-Duty. *Ibid.* Sect. 15 & 17.

On Forfeiture of one hundred Pounds. One Moiety to his Majesty: The other to him that sues for the same.

All small Boats and Vessels under the Burden of 20 Tuns prohibited by his Majesty's Proclamation from sailing or passing out of any Port or Place of Great Britain, &c. in Time of Infection, till Security be given in 500*l.* with Sureties as directed by this Act by Bond, with Condition, *That if such Boat or Vessel shall not go to, or touch at any Country, Port, or Place to be mentioned for that Purpose in such Proclamation:* And if the Master or other Person, having Charge of such Boat, &c. or any Mariner or Passenger shall, during the Time of Infection, go on Board any other Ship or Vessel, at Sea, or permit, or suffer any Person to come on Board such Boat or Vessel at Sea, or shall receive any Goods or Merchandize whatsoever, out of any other Ship or Vessel. *Ibid.* Sect. 18.

The Boat or Vessel, for which such Security shall be required by Proclamation, which shall fail before such Security be given, is forfeited together with Tackle, Apparel, &c. to the King, and may be seized, sued for, and recovered in his Majesty's Exchequer.

The Master and Mariner of such Boat or Vessel being thereof convicted on the Oath of one or more credible Witnesses, forfeits 50 Pounds.

One Moiety to the Informer, the other to the Poor of the Parish where such Offender shall be found.

To be levied by Distress, &c. and for want of sufficient Distress, to be committed to Prison without Bail, for three Months.

Persons receiving or buying any Goods, Wares, or Merchandizes, clandestinely run or imported contrary to Law, before the same shall be condemned, knowing the same to be clandestinely run or imported.

Forfeit 10*l.* One Moiety to the Informer, the other to the Poor of the Parish, where Offence committed.

To be levied, *ut supra*. For Want of Distress to be committed, *ut supra*.

One or more credible Witnesses. *Ibid.* Sect. 19.

Vide Smuglers or Runners of Foreign Goods.

Officer and Person appointed to see Quarentine duly performed; or Watchman, knowingly and willingly permitting, or suffering any Person, Ship, Goods or Merchandize to depart, or be conveyed out of any Town, &c. infected, unless in such Cases, and by such proper Licences, as shall be directed or permitted by Orders notified by Proclamation. *Ibid.* Sect. 24.

Guilty of Felony without Benefit of Clergy.

Persons aggrieved by any Judgment of any Justice or Justices for any Offence against the Act 7 Geo. c. 3. may appeal to Quarter-Sessions, who are finally to determine the same.

[Clause] His Majesty may order Ships to be provided, or cause Houses or Lazarets to be erected for the receiving and entertaining of Persons infected with the Plague, or obliged to perform Quarentine, and also Sheds, Tents, and other Places proper for the depositing, opening and airing of Goods and Merchandizes, to continue for such Term, as his Majesty shall

APPENDIX

Offences.

Quarentine.

Penalties.

shall think proper, in convenient Places within *Great Britain* and *Ireland* to be allowed and appointed by Two or more Justices of the Peace for the County, &c. living near thereunto under their Hands and Seals, either in waste Grounds or Commons; or where such waste Grounds or Commons are not sufficient, in any other Grounds, not being a House, Park, Garden, Orchard, Yard, planted Walk or Avenue to a House; paying such Rate, Rent or Consideration for the same, as shall be agreed between the Persons interested, their Guardians or Trustees, and any Two Persons appointed by his Majesty under his Sign Manual. *Ibid.* Sect. 5.

Next Justices, when any Town or Place shall be infected with the Plague, or Lines and Trenches shall be made, &c. to order such sufficient Watches by Day and Night upon such Town, &c. as they shall think fit; and upon such Houses, Lazarets, Ships, or other Places, for performing *Quarentine*; who shall not permit or suffer any Person, Ship, &c. to depart or be conveyed out of such Town, &c. so appointed for performing *Quarentine*, without a Licence. *Ibid.* Sect. 10.

[*Just. Sess.*] To adjudge, determine, assess, and settle Differences, concerning such Rate, Rent, or Consideration between Persons interested and the Persons appointed by his Majesty for Grounds, where the Waste or Common is not sufficient; and their Judgment and Determination is final. *Ibid.* Sect. 5.

All Watches directed by Virtue of this Act, are to be maintained at the County Charge or Riding, and the Money is to be raised as for County-Gaols and Bridges. To be paid to the Chief Constable of each Division, who is to distribute it according to the Order of Sessions. *Ibid.* Sect. 23.

Persons aggrieved by any Judgment of any Justice or Justices, for Offences against this Act, may appeal to Quarter-Sessions, who are finally to determine the same.

Offences.

Recusancy.

Penalties.

[*One*] IF the Minister, Petty Constables, or Church-wardens of any Parish, or any Two, complain of any Person (under the Peerage) suspected for Recusancy. Stat. 7 Jac. 1. c. 6. Sect. 26.

To tender the Oath of Allegiance, and upon Refusal, to commit till next Assize or Sessions, where if he refuseth again, he incurs a *Præmunire*; but Feme Coverts shall be imprisoned only, to remain there, till they take the Oath.

[*Two*] To summon and convene before them all such Persons within their Jurisdictions, &c. suspected to be dangerous, or disaffected to the Government, and tender the Oath of Abjuration.

To certify the Christian Name, Surname, and Place of Abode to the next Quarter-Sessions; if he takes it not next Term, or Sessions after Certificate, is a Popish Recusant convict.

Upon Refusal, Stat. 6 Ann. c. 14. Sect. 7. Quorum 1.

Vide Recusancy in Title Papists.

Offences.

Riots and Rioters.

Penalties.

[*One*] IF 12 or more Persons are riotously and tumultuously assembled, he may by Proclamation require and command them to disperse themselves, and peaceably to depart to their Habitations, or to their lawful Business. Stat. 1 Geo. c. 5. Sect. 1.

And if they continue together an Hour after, 'tis Felony without Clergy.

The

APPENDIX

Offences.

Riots and Rioters.

Penalties.

The Form of the Proclamation.

OUR Sovereign Lord the King chargeth and commandeth all Persons, being assembled, immediately to disperse themselves, and peaceably to depart to their Habitations, or to their lawful Business, upon the Pains contained in the Act made in the First Year of King George, for preventing Tumults and riotous Assemblies.

God save the King.

Every Justice within his Jurisdiction is required on Notice or Knowledge of any riotous and tumultuous Assembly, to resort to the Place, and there to make or cause to be made Proclamation in Manner afore said. 1 Geo. c. 5. Sect. 2.

Rioters demolishing, or pulling down, or beginning to demolish or pull down any Church or Chapel, or any Building for religious Worship, certified and registred according to the Stat. 1 W. & M. c. 18. or any Dwelling-house, Barn, Stable, or other Out-house. Stat. 1 Geo. c. 5. Sect. 4.

Felony without Clergy.

Knowingly to let, hinder or hurt any Person beginning to make Proclamation, whereby such Proclamation shall not be made; and the Rioters, to whom it should have been made, if not hindred, not dispersing themselves, but continuing together an Hour after such Let or Hindrance. Stat. 1 Geo. c. 5. Sect. 5.

Felony without Clergy.

The Stat. 1 Geo. c. 5. against Rioters, to be read openly at every Quarter-Sessions. Sect. 7.

Note, All Prosecutions upon the Stat. 1 Geo. c. 5. to be commenced in 12 Months. Sect. 8.

[Two] With the Sheriff or Under-Sheriff, shall by the Power of the County, suppress Riots, Routs, and unlawful Assemblies, upon View to record it, commit the Offenders, and return the Record into the King's Bench, by which they shall be convict: If the Offenders be gone, Enquiry to be made in a Month, and the Matter determined according to Law. The Penalty of not doing this, 100 Pounds. Stat. 13 H. 4. c. 7. Sect. 4.

Riots, &c. shall be suppress'd and enquired of, at the King's Charge, which the Sheriff is to disburse, by Indenture, between the Justices and him. Stat. 2 H. 5. c. 8. Sect. 2.

Persons guilty of heinous Riots. Stat. 2 H. 5. c. 8. Sect. 2.

One Year's Imprisonment, without Bail.

Together with the Sheriff, under their Hands and Seals to certify a Riot to the Lord Chancellor, to the End he may send out a Capias against the Rioters. Stat. 2 H. 5. c. 9. Sect. 2.

To testify, That the common Fame runs in the same County of the same Riot, before a Capias shall be awarded, upon 6 H. 5. c. 9. Stat. 8 H. 6. c. 14. Sect. 2.

If a Riot, &c. by Maintenance, or Embracery of the Jurors, be not found. Stat. 19 H. 7. c. 13. Sect. 11.

They, with the Sheriff, or Under-Sheriff, are to certify the Names of such Maintainers and Embracers, which shall be a Conviction; and they shall forfeit 20 l. a-piece, and to remain in Prison, at the Discretion of the Justices.

APPENDIX.

Offences.

Rivers.

Penalties.

[**Qu. Sess.**] **T**O make Orders at their Quarter-Sessions in the Counties of *Oxford, Berks, Bucks, Wilts and Gloucester*, for preventing Abuses in the Rivers of *Thames and Isis*, and to assess the Rates of Carriage in Boats.

Offences.

Robberies.

Penalties.

[**One**] **T**O take the Oath of the Person robbed, whether he knows the Persons who robbed him, or any of them; and if he knows any of them, he is to enter into sufficient Bond to prosecute the Person or Persons, so by him known, by Indictment, or otherwise, according to Law. Stat. 27 *Eliz. c. 13. Sect. 11.*

To grant a Warrant to make Hue and Cry from Town to Town, and County to County, where a Robbery is committed. Stat. 28 *Ed. 3. c. 11.*

[**Two**] Two Justices dwelling within, or near the Hundred, where the Robbery is committed, shall set a Tax upon every Parish within the Hundred, for the Payment of the Money, whereof the Party is robbed. Stat. 27 *Eliz. c. 13. Sect. 5. Quorum 1.*

Offences.

Runaways.

Penalties.

[**Two**] **P**ersons running away and leaving their Charge to the Parish. Stat. 7 *Jac. 1. c. 4. Sect. 8. Vide Stat. 12 Ann. Sess. 2. c. 4.*

To be punished as incorrigible Rogues.

Persons, who threaten to run away, and leave their Charge to the Parish. Stat. 7 *Jac. 1. c. 4. Sect. 8. Vide 12 Ann. Sess. 2. c. 23.*

To be sent to the House of Correction, there to be punished as sturdy Rogues, (unless they put in sufficient Sureties to discharge the Parish) and not to be delivered, but at a Meeting of the Justices, or in open Sessions.

Vide Title Tagabonds.

Offences.

Sacrament.

Penalties.

[**Three**] **T**O take Informations, upon Oath, of two lawful Persons at least, against any Person, who shall speak or do any Thing in Contempt of the most Holy Sacrament; and to bind over by Recognisance, every Accuser and Witness in five Pounds a-piece, to appear at the next Sessions, and prosecute. Stat. 1 *Ed. 6. c. 1. Sect. 1.*

To send out two Writs, *Capias Exigend* and *Capias Utlegat*, against Contemnners of the Holy Sacrament, in all Counties and Liberties; and upon their Appearance to fine and imprison them, or to take Bail for their Appearance, to be tried at Sessions. Stat. 1 *Ed. 6. c. 1. Sect. 3.*

To direct a Writ in the King's Name to the Bishop of the Diocese, where the Contemner of the Sacrament committed the Offence, by which Writ he shall be required to be present himself (or some for him sufficiently learned) at the Arraignment of the Offender, to give Advice concerning the Offence committed. Stat. 1 *Ed. 6. c. 1. Sect. 4.*

APPENDIX.

Offences.

Salt.

Penalties.

[One] Owners of Salt seized, not making it appear before the next Justice, within ten Days after Seizure, by the Oath of one or more Witnesses, That the Salt was duly enter'd, and that there was a Warrant for carrying away the same. Stat. 5 & 6 W. & M. c. 7. Sect. 7.

Salt not measured by a Bushel of Eight Gallons Winchester Measure, by fit Measurers, sworn and admitted by a Justice without Fee. Stat. 5 & 6 W. & M. c. 7. Sect. 18.

To take the Affidavit of the Quantity of Rock-Salt, melted and refined. Stat. 5 & 6 W. & M. c. 7. Sect. 26.

Persons removing or conveying any Salt from any Salt-Works, or Place thereunto belonging, without due Entry of the same, and Payment or Security, or without Warrant, Ticket or Licence, for removing the same. Stat. 1 Ann. Sess. 1. c. 21. Sect. 4.

Due Proof.

Persons hindring or obstructing any Officer or Officers, for the Salt-Duties, in the Execution of his or their Offices, or shall beat or abuse them. Stat. 1 Ann. Sess. 1. c. 21. Sect. 4.

Due Proof.

No Salt to be brought out of Scotland by Land. Stat. 2 & 3 Ann. c. 14. Sect. 7.

[Two] Officer having due Notice, and neglecting or refusing to attend weighing Salt, which is entered, to be put on Board any Ship or Vessel, or carried by Land, and the Duty paid or secur'd, and all other Monies due on Account of Salt delivered. Stat. 9 & 10 W. 3. c. 6. Sect. 3.

Party to be summoned.

Confession, or Two Witnesses.

Every Maker or Curer of White Herrings in that Part of Great Britain called England, Wales, and Berwick upon Tweed, before he remove any White Herrings (except for Exportation) from the Office or Place where cured, must enter them at the next Salt-Office, and pay the Duty. And the Quantity must be marked on the Cask, and upon the Entry and Payment of the Duty the Salt-Officer to give a Permit. Stat. 8 Geo. c. 16. Sect. 2.

[Three]

The Salt shall be forfeited, one Moiety to the King, the other to him who seized, and the Owner shall forfeit double the Value.

Double the Value of the Salt so measur'd.

To be seized, and if not able to pay the Penalties, and no sufficient Distress, to be committed to the House of Correction, to be whipp'd, and kept to hard Labour, not exceeding one Month.

Twenty Pounds; and for Non-payment, and in Default of Distress, to be committed to the House of Correction, to be whipp'd and kept to hard Labour, not exceeding a Month.

The Salt forfeited, and 20 s. a Bushel; and if not paid, to be committed to the next Gaol, for Six Months, without Bail or Main-prize.

Forty Shillings, to the Informer.

To be levied by Distress and Sale, unless redeemed in Six Days; and for Want of Distress, Imprisonment till Satisfaction be made.

An Appeal lies to the Quarter-Sessions.

The White Herrings removed or carried away before Entry and Duty paid, or Cask mark'd, forfeited; and 40 Shillings for every Cask or Vessel removed.

One Moiety to his Majesty, the other to the Officer, who shall seize the same.

To be recovered, levied and mitigated in such Manner, as Penalties by any Law of Excise are recoverable.

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Five

APPENDIX

Offences.

Salt.

Penalties.

[**Three**] Badger, Retailer, or other Person, making, or dealing in Salt, or buying Salt to sell again, otherwise than by Weight, after the Rate of 56 Pounds Weight to the Bushel. Stat. 9 & 10 W. 3. c. 6. Sect. 1.

Party to be summoned, Confession, or Two Witnesses.

Five Pounds to the Informer, to be levied by Distress and Sale, unless redeemed in Six Days; and for Want of Distress, Imprisonment, till Satisfaction be made.

An Appeal lies to the Quarter-Sessions.

[**Du. Sess.**] To certify the Proof of Salt taken by the Enemy, or perished at Sea, in order for the Owners to have the Duty repaid, or Security delivered up. Stat. 12 Ann. Sess. 2. c. 2. Sect. 7.

Offences.

Scavenger.

Penalties.

[**One**] House-keepers in the County of Middlesex, and City of Westminster, which are within the Weekly Bills of Mortality, and in Kensington, not sweeping the Streets before their Houses, on Wednesdays and Saturdays. Stat. 2 W. & M. c. 8. Sect. 2.

View, Confession, or one Witness.

Three Shillings and four Pence a Day, to be levied by Distress and Sale; if not paid within Six Days, to be committed till Payment.

This Penalty enlarged to 10 s. by Statute 8 and 9 W. 3. c. 37.

To be employed, if upon Conviction, by the Evidence; one Moiety to the Poor, the other to the Informer. If upon View, one Moiety to the Poor, the other to the Repair of the Highways.

Persons laying, or suffering to be laid any Sea-coal-Ashes, Dust, Dirt, &c. in any open Street, Lane or Alley, before their own Houses, or any publick Places. Stat. 2 W. & M. c. 8. Sect. 2.

View, Confession, or one Witness.

Five Shillings, to be levied and employed, *ut supra*.

Persons laying any Ashes, Dirt, or Soil, before the Houses or Walls of Inhabitants, or any Church-yard Wall, or the Queen's Palace; or throwing, or causing to be thrown into any common Sewer or Highway, or any private Vault, any noisome Thing whatsoever. Stat. 2 W. & M. c. 8. Sect. 2.

Conviction, *ut supra*.

Twenty Shillings, to be levied and employed, *ut supra*.

The respective Church-wardens, and the House-keepers, and other Keepers of Whitehall, Somerset-house, St. James's House and Park, the Guard-houses and Stables, &c. the Ushers, Porters, or Keepers of Courts of Justice. *Ibid.*

To suffer the like Penalties for the like Offences, and to be levied and employed, *ut supra*.

Persons hooping, washing, or cleansing any Vessels in Streets, Lanes, or open Passages; or setting any Dung, Soil, Rubbish, or empty Coaches to make or mend, or rough Timber, or Stones to be saw'd or wrought. Stat. W. & M. c. 8. Sect. 4.

Conviction, *ut supra*.

Twenty Shillings for every Offence, to be levied and employed, *ut supra*.

Rakers, Scavengers, &c. not bringing Carts, and by a Bell, or otherwise, giving Notice

Forty Shillings for every Offence, to be levied and employed, *ut supra*.

Twenty

APPENDIX.

Offences. **Scavenger.** *Penalties.*

Notice of their Coming, and not daily (except Sundays and Holidays) carrying away the Dirt, &c. Stat. 2 W. & M. c. 8. Sect. 5.
Conviction, *ut supra*.

Inhabitants, and Owners of Houses unoccupied, not *Paving the Streets*, before their Doors. Stat. 2 W. & M. c. 8. Sect. 8.
Conviction, *ut supra*.

Owners and Inhabitants of Houses new built, not *paving*, or otherwise amending the Ground before their Houses and Buildings. Stat. 2 W. & M. c. 8. Sect. 7.
Conviction, *ut supra*.

Scavengers duly chosen, and refusing. Stat. 2 W. & M. c. 8. Sect. 9.
Conviction, *ut supra*.

Twenty Shillings a Rod or Perch for every Default, and Twenty Shillings a Week, till amended, to be levied and employed, *ut supra*.

Forty Shillings for every Perch, and the like for every Week, till amended; to be levied and employed, *ut supra*.

Ten Pounds, to be levied, *ut supra*, and employed in Mending and Repairing the Highways and Streets of the same Parish.

[Two] Scavengers Tax to be made, after a Pound-Rate, by Constables, &c. and other antient Inhabitants, for a Year, to be allowed by Two Justices, payable quarterly; and in Case of Refusal to be levied by Distress and Sale; and for Want of Distress to be imprisoned till Payment. Stat. 2 W. & M. c. 8. Sect. 2. Sect. 10.

Scavengers refusing to account within 28 Days after the Election of new Scavengers. Stat. 2 W. & M. c. 8. Sect. 2. Sect. 11.

To be committed till they account, and pay over the Money in their Hands to the new Scavengers.

To appoint vacant Places, near the Streets, for the Scavengers, to lay the Dirt, &c. in giving Satisfaction to the Owners, and in Case of unreasonable Demand, to moderate the Price. Stat. 2 W. & M. c. 8. Sect. 12.

Note, If any Conviction upon the Stat. 2 W. & M. c. 8. or on the Stat. 8 & 9 W. 3. c. 37. shall be by View or Knowledge of a Justice of Peace, then one Half of the Penalty shall be to the Poor, the other towards repairing Highways, and cleansing the Streets, to be paid to the Scavenger, otherwise to the Relief of the Poor. Stat. 8 & 9 W. 3. c. 37. Sect. 2.

[Qu. Sess.] Justices of the Peace in any City or Market-Town (not having already Provision made for them by any former Law) at their General or Quarter-Sessions, may appoint *Scavengers*, and order the Repairing and Cleansing the Streets; and may appoint Persons, or make Assessments on Owners and Occupiers of Lands and Houses equally, not exceeding 6 Pence in the Pound, to defray the Charges of such Scavengers, to be levied in Eight Days, by Distress and Sale. Stat. 1 Geo. c. 52. Sect. 9.

Offences. **Servants.** *Penalties.*

[One] **S**ervants to Clothiers, Woollen-Weavers, Tuckers, Fullers, Cloth-workers, Sheermen, Dyers, Hofiers, Tailors, Shoemakers, Tanners, Pewterers, Bakers, Brewers, Glovers, Cutlers, Smiths, Farriers, Curriers, Sadlers, Spurriers, Turners, Cappers, Hat or Feltmakers, Fletchers, Arrowhead-makers, Butchers, Cooks, Millers, refusing to serve for Statute-Wages, and departing (being retained) without a Quarter's Warning, or lawful Cause, to be allowed by a Justice. Stat. 5 Eliz. c. 4. Sect. 9.
Masters,

To be bound over to the Sessions.
The Cause to excuse, must be proved by Two Witnesses.

Forty

APPENDIX.

Offences.

Servants.

Penalties.

Masters, being Clothiers, or any of the Trades abovementioned, putting away his Servant without a Quarter's Warning, or good Cause to be allowed by a Justice, and proved by two Witnesses. Stat. 5 Eliz. c. 4. Sect. 8.

Forty Shillings, to be inflicted at Sessions, and they to be bound over.

One retained in Service to work, and departing without Licence. Stat. 5 Eliz. c. 4. Sect. 11.

One Month's Imprisonment.

To give a Testimonial under his Hand to Labourers, that they had not sufficient Work in the Place, where they dwelt, that they might get Work in other Shires in the Time of Harvest, for which he may take one Penny. Stat. 5 Eliz. c. 4. Sect. 23.

[Two] Servants assaulting Master, Mistress, Dame, or Overseer. Stat. 5 Eliz. c. 4. Sect. 21.

One Year's Imprisonment, or less, or to be bound over to the Sessions, there to receive such open Punishment, as shall be thought convenient, Life and Member excepted.

Unmarried Women fit to serve, being above 12, and under 43, refusing to serve for convenient Time and Wages. 5 Eliz. c. 4. Sect. 24.

Imprisonment.

To hear and determine the Breach of 5 Eliz. c. 4. upon Indictment, or otherwise, and award Process and Execution accordingly. The Forfeitures (except those otherwise limited) to be divided between the Queen and Prosecutor. Stat. 5 Eliz. c. 4. Sect. 39.

[Du. Sess.] Servants to Clothiers, &c. refusing to serve for the Wages limited, according to the Statute, and being retained, departing his or their Service without a Quarter's Warning, or some lawful Cause. Stat. 5 Eliz. c. 4. Sect. 9.

To be imprisoned without Bail, but upon Submission to perform the Service, to be enlarged without Fees.

A Servant having served in one City or Town, and getting to serve in another, without a Testimonial. Stat. 5 Eliz. c. 4. Sect. 12.

To be imprisoned till he procure one; if he procure it not in 20 Days, to be whipped as a Vagabond.

A Master taking a Servant without a Testimonial. Stat. 5 Eliz. c. 4. §. 11. Vide Wages.

Five Pounds.

Offences.

Sewers.

Penalties.

[Six] After the End of ten Years, all Laws, Ordinances, and Constitutions, made by Virtue of any Commission of Sewers, shall be in Force for one Year; and Six Justices may execute such Commission, and Law, &c. unless in the Interim a new Commission issues. Stat. 13 Eliz. c. 9. Sect. 2. Quor' 2.

[Du. Sess.] To swear the Commissioners of Sewers. Stat. 23 H. 8. c. 5. Sect. 5.

Offences.

Sheep.

Penalties.

[Du. Sess.] HE that keeps in his own Possession at any one Time above 2000 Sheep. Stat. 25 H. 8. c. 13. Sect. 1.

The Prosecution for the King to be within three Years; for a Subject, within one.

Three Shillings and four Pence a-piece. Lambs not to be accounted Sheep till Midsummer twelve Months after their Fall. 1000 Sheep to be reckoned after the Rate of 120 to the 100.

Executors, Infants, Spiritual Persons, or Temporal Persons, for House-Provisions, exempted. First

APPENDIX.

Offences.

Sheep.

Penalties.

Transporting Sheep beyond Sea. Stat. 8 Eliz. c. 3. Sect. 2.

First Offence, Forfeiture of Goods, to be divided between the Queen and the Prosecutor. To be imprisoned for a Year, and to have his Hand cut off in some open Market. Second Offence, Felony.

Offences.

Sheriff.

Penalties.

[One] Sheriff, Under-Sheriff, or Sheriff's Clerk, entering in the County-Court any Plaint in the Absence of the Plaintiff, or his Attorney, or having above one Plaint for one Cause. Stat. 11 H. 7. c. 15. Sect. 8.

Forty Shillings, to be divided between the King and the Prosecutor.

To examine this Matter, and if the Party be found guilty, to certify the Examination into the Exchequer, within three Months, on Pain of 40 s.

The Certificate is a Conviction.

[Du. Sess.] Sheriffs, Under-Sheriffs Clerks, Bailiffs, Gaolers, Coroners, Stewards, Bailiffs of Franchises, and all other Officers, who act contrary to Stat. 23 H. 6. c. 10. Sect. 1.

40 l. to be divided between the King and the Prosecutor.

The Justices, who are to have the Controlment of the Sheriff, and his Estreats, are to be named in Michaelmas Sessions, by the Custos Rotulorum, or (in his Absence) by the Eldest of the Quorum. Stat. 11 H. 7. c. 15. Sect. 20.

Sheriffs, Coroners, and other Persons having Return of Writs, not returning Jurors, and not levying Issues, according to Stat. 27 Eliz. c. 7. Sect. 2.

Five Marks to the Queen, upon Conviction, Process to issue for the Levying of it.

Every Bailiff of a Franchise, Deputy, or Clerk of a Sheriff, or Under-Sheriff, intermeddling with their Offices before they are sworn. Stat. 27 Eliz. c. 12. Sect. 4.

40 l. to be divided between the King and the Prosecutor; upon Conviction to award Process.

Note, The Original Poll-Books, &c. of Elections of Knights of the Shire, are to be delivered on Oath by the Sheriffs, or returning Officers, to the Clerk of the Peace, and by him kept among the Records of the Sessions of the Peace. Stat. 10 Ann. c. 23. Sect. 5.

Vide Title Forcible Entry and Detainer, Title Oath, and Title Wages of Knight of the Shire.

Offences.

Ships.

Penalties.

[Two] Persons entering Ships in Distress, without Leave of the Commander, (except Officers of the Customs, Constables, or others by their Order) or shall molest the Assistants, or endeavour to hinder the Saving of the Ships or Goods, or when saved, deface the Marks of any Goods before taken down in a Book. Stat. 12 Ann. Sess. 2. c. 18. Sect. 3.

Shall within 20 Days after make double Satisfaction to the Party grieved, at Discretion of two next Justices; or in Default, be by them sent to the next House of Correction to hard Labour for twelve Months ensuing.

[Three] Persons assisting Ships in Distress, and preserving the same, or their Cargoes, to

In Default, the Ship, &c. to remain in Custody of the Officer of the Customs, till

APPENDIX.

Offences.

to be paid by the Commander, Master or Owner, within 30 Days after, a reasonable Reward for their Service. 12 Ann. Sess. 2. c. 18. Sect. 2.

Ships.

all Assistants be reasonably gratified; and in Case of Disagreement, three near Justices named by the Officer, shall adjust the Quantum to be paid each Assistant.

Penalties.

And if no Person claims the Goods, the chief Officer of the nearest Port to apply to Three of the nearest Justices, who are to put him, or some other responsible Person, in Possession of the Goods, taking an Account in Writing thereof, to be signed by the said Officer, and if perishable, sold presently, or else kept a Year. 12 Ann. Sess. 2. c. 18. Sect. 2.

Offences.

[Du. Sess.] Shoemakers not making their Boots, &c. of good and sufficient Stuff, nor sewing them well, and selling on Sunday. Stat. 1 Jac. 1. c. 22. Sect. 28.

Shoemakers.

Penalties.

3 s. 4 d. for every Offence, and the Value of the Wares made and sold, to be divided one Third to the King, one to the Prosecutor, and the other to the City, Borough, Town or Lord of the Liberty, where the Offence is committed.

In London, the Master and Wardens of the Company of Shoemakers, Curriers, Girdlers and Saddlers, to search every Quarter at least, and view all Wares made of tanned Leather, and to seize all insufficient Wares. Stat. 1 Jac. 1. c. 22. Sect. 29.

Forty Shillings for every Year's Default, to be divided between the King and Prosecutor.

Offences.

[One] Silk-winders, and Doublers, unjustly purloining, imbezilling, pawning, selling, or detaining Silk, delivered by Silk-throwers, and the Buyers and Receivers of such Silk. Stat. 13 & 14 Car. 2. c. 15. Sect. 7. 20 Car. 2. c. 6. Sect. 3.

Silk.

Penalties.

To pay such Recompence and Satisfaction for Damage, Loss, and Charges, as he shall order, not exceeding what the Party proves: If the Party be not able to make Satisfaction, or if he be, and do it not in 14 Days, to be whipped and set in the Stocks.

Confession, or one Witness. This extends to all Persons, who shall imbezil, pawn, sell, or detain any Silk delivered to any Silk-Manufacturers, Agents, Journeymen, Wapers, and Winders, by Stat. 8 & 9 W. 3. c. 36. Sect. 6.

To be committed to Prison, or House of Correction, till Satisfaction be made, or Punishment inflicted.

Offences.

[Du. Sess.] Exercising the Trade of a Silk-thrower, not having served seven Years. Stat. 13 & 14 Car. 2. c. 15. Sect. 2.

Silk-thrower.

Penalties.

40 s. a Month, one Moiety to the King, the other to the Prosecutor.

Offences.

[One] After 25 March, 1722. Persons, who shall be found passing (knowingly and wittingly) with any Foreign Goods or Commodities landed from any

Smuglers or Runners of foreign Goods.

Penalties.

Guilty of Felony, and to be transported for seven Years, to some of his Majesty's Plantations or Colonies in America.

APPENDIX.

Offences. Smuglers or Runners of Foreign Goods. Penalties.

any Ship or Vessel, without the due Entry, and Payment of the Duties in their Custody, from any of the Coasts of this Kingdom, or within 20 Miles of any of the said Coasts; and shall be more than five Persons in Company, or shall carry any offensive Arms or Weapons, or wear any Vizard, Mask, or other Disguise, when passing with such Goods, or shall forcibly hinder or resist any Officer of the Customs or Excise, in the Seizing Run-Goods, are, Stat. 8 Geo. c. 18. Sect. 6.

Returning into Great Britain or Ireland, before the Expiration of 7 Years.

Persons Receiving or Buying any Goods, Wares, or Merchandizes, clandestinely run or imported, before the same shall have been legally condemned, knowing the same to be so clandestinely run or imported.

One or more credible Witnesses, or Confession. Stat. 8 Geo. c. 18. Sect. 10.

[Two] All Seizures of Vessels or Boats of 15 Tuns, or under, which shall be made after the 25th of March, 1722. by Virtue of the Act 8 Ann. For granting to her Majesty new Duties of Excise, &c. And of an Act for Continuing several Impositions, &c. to raise Money by Loan for the Service of the Year 1710, or of any other Act relating to the Revenue of Customs, for carrying uncustomed or prohibited Goods from Ships, inwards, or for relanding Certificate or Debenture Goods from Ships, outwards: And all Seizures of Horses, or other Cattle, or Carriages whatsoever, for being used in the Removing, Carriage, or Conveyance of such Goods contrary to the said Acts. Stat. 8 Geo. c. 18. Sect. 16.

Note, Justices of London and Westminster have the like Power in Summoning, Examining, &c. such Seizures, made in the said Cities, as Justices of any other County or Place have. Ibid. Sect. 17.

Felony without Benefit of Clergy.

Forfeit 20 Pounds, to be levied by Distress and Sale, &c.

And for Want of Distress, to be committed to Prison without Bail or Mainprize for 3 Months.

One Moiety of the above Penalty to the Informer, the other to the Poor of the Parish where the Offence committed.

To be examined into, proceeded upon, heard, adjudged, and determined by two or more Justices, residing near the Place where such Seizure shall be made, whose Judgment is final, and not liable to Appeal, or Certiorari.

Offences. Soldiers and Mariners. Penalties.

[Qu. Sess.] A Soldier listed departing without Licence. Stat. 7 H. 7. c. 1. Sect. 2. Stat. 2 & 3 Ed. 6. c. 2. Sect. 6.

The Trial to be in the County where he is apprehended.

Felony without Benefit of Clergy.

To charge every Parish towards a weekly Relief of maimed Soldiers and Mariners, so as no Parish pay weekly above 10d. nor under 2d. nor any County, which consists of above 50 Parishes, pay above 6d. one Parish with another. Stat. 43 Eliz. c. 3. Sect. 6.

Upon

APPENDIX.

Offences.

Soldiers and Mariners.

Penalties.

Upon a Certificate under the Hand and Seal of the chief Commander, or of the Captain under whom a *Soldier* or *Mariner* served, a quarterly Pension is to be allowed him, till revoked or altered; he who hath not born Office, not to exceed 10*l*. An Officer under a Lieutenant 15*l*. A Lieutenant 20*l*. Stat. 43 *Eliz* c. 3. Sect. 8.

A Person commanded to muster, absenting himself without lawful Excuse, or not bringing his best Arms. Stat. 4 & 5 P. & M. c. 3. Sect. 2.

Any Person authorized to muster or levy Soldiers, exacting or taking any Reward to discharge, or spare any from the Service Stat. 4 & 5 P. & M. c. 3. Sect. 3.

A Captain, or other Officer, after he shall have (for a Reward) licensed a Soldier to depart, not paying him his Wages, and Coat, and Conduſt-Money. Stat. 4 & 5 P. & M. c. 3. Sect. 4.

Ten Days Imprisonment without Bail, unless he agrees to pay 40*l*. to be estreated in to the *Exchequer*.

Ten Times so much as he shall exact, or take; one Moiety to the Crown, the other to the Prosecutor.

Ten Times so much as he shall take, to be divided between the Crown and the Prosecutor, and to the Soldier three Times so much as he should have paid him.

Offences.

Spirits.

Penalties.

[Du. Sell.] **S**ervants and others wittingly and willingly assisting in making Spirits, &c. contrary to Stat. 10 & 11 W. 3. c. 4. Sect. 1.

Six Months Imprisonment, without Bail or Mainprize.

Offences.

Squibs.

Penalties.

[One] **N**O Person of what Age, Sex, Degree or Quality soever, to make, sell, or utter, or offer, or expose to Sale any *Squibs*, *Rockets*, *Serpents* or other *Fire-works*; or to permit or suffer any *Squibs*, &c. to be cast, thrown, or fired out of, or in their Houses or Lodgings, or any Part or Place thereto adjoining, into any publick Street, &c. or to throw, cast, or fire, or to be aiding and assisting in Throwing, &c. any *Squibs*, &c. in or into any Street, &c. is a common Nufance. Stat. 9 & 10 W. 3. c. 7. Sect. 1.

Persons making, or causing to be made, giving, selling or uttering, or offering, or exposing to Sale any *Squibs*, &c. Stat. 9 & 10 W. 3. c. 7. Sect. 2.

Confession, or two Witnesses.

Persons permitting, or suffering any *Squibs*, &c. to be cast, thrown, or fired from out of, or in his, her, or their House or Houses, Shops, Dwelling or Habitation, or any Part thereof, into any Street, &c. Stat. 9 & 10 W. 3. c. 7. Sect. 2.

Conviction, *ut supra*.

Five Pounds, to be levied by Distress and Sale, one Half to the Poor, the other to the Prosecutor.

Twenty Shillings, to be levied and employed, *ut supra*.

Persons throwing, casting or firing, or being aiding and assisting in Throwing, &c. any *Squibs*, &c. Stat. 9 & 10 W. 3. c. 7. Sect. 3.

Twenty Shillings, to be employed, *ut supra*; and if not paid immediately to the Justice, the Party to be committed to the House of Correction, to hard Labour, not ex-

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APPENDIX.

Offences.	The Squibs.	Penalties.
Conviction, <i>ut supra</i> .	exceeding a Month, unless the Offender shall sooner pay the Money.	

Note. This Act extends not to the Master of the Ordnance, nor to the Artillery Company.

Offences.	Stamp Duty.	Penalties.
[One] Counterfeiting or forging Stamps. Stat. 9. Ann. c. 23. Sect. 41.	Felony.	

Every Commissioner and Officer acting in collecting the Stamp-Duties, to take the Oath appointed to be taken, by 9 Ann. c. 19. before two of the Commissioners, or before one Justice of the Peace. *Ibid.* Sect. 118.

Justice to give to the Officer a Certificate of his having taken the said Oath *Gratis*.
Sec. 136.

Counterfeiting or forging any Stamp, made or used in Pursuance of the said Statute, or counterfeiting or resembling the Impression of the same, upon any Parchment or Paper, to defraud the Crown of the Duty, or selling such Paper, &c. with a counterfeit Mark, knowing it to be so, or privately and fraudulently using any Stamp, thereby to defraud the Crown. *Ibid.* Sect. 128.

Felony, without Benefit of Clergy.

To cause or procure to be forged or counterfeited any *Stamp* or *Mark*, to resemble any Mark or Stamp, provided, made, or used in Pursuance of this, or any Act, relating to the Stamp-Duties; or to cause or procure any Vellum, Parchment, Paper, Cards, or Dice, to be marked or stamp'd, with such counterfeit Stamp, or Mark. Stat 6 Geo. c. 21. Sect. 38.

Felony, without Benefit of Clergy.

[Two] · If any Person after 1 Aug. 1712. shall write or print any Surrender or Admittance of or to any Copyhold Estate in Great Britain or Wales, or any Grant or Lease by Copy of Court-Roll, &c. (except the Surrender to the Use of a Will) or any Matter directed to be stamp'd, by 10 Ann. c. 19. or shall sell or expose to Sale any Pamphlet or News-paper (excepting Pamphlets exceeding one whole Sheet) before the same shall be stamped, the Offender forfeits. *Ibid.* Sect. 117.

Ten Pounds, with full Costs for every Offence.

One Moiety to the Crown, the other Moiety, with full Costs, to the Prosecutor. Sect.

Every Steward, or his Deputy, offending
and being convicted. *Ibid.*

Over and above the said Forfeiture, shall lose his Place; and such Writing is not good, and shall not be given in Evidence, until five Pounds together with the Ten, be paid, and a Receipt be produced under the Hand of the Receiver General of the Stamp-Duties.

APPENDIX

Offences.

Stamp-Duty.

Penalties.

Persons writing or printing any Thing on stamped Paper, after the Crown shall think fit to alter or renew the Stamps, after the Expiration of sixty Days, after such Intention of Altering or Renewing shall be published by Proclamation. *Ibid.* Sect. 122.

ties, or his Deputy, and until the Vellum, &c. be stamped.

Forfeit as Persons writing on Paper not stamped

Printer and Publisher of any Pamphlet of more than one Sheet, and the Duty not paid, and the Title of it registred, and one Copy not stamped within the Time limited by the said Statute. *Ibid.* Sect. 125.

Twenty Pounds, with full Costs.
One Moiety to the Crown, the other Moiety, with full Costs, to the Prosecutor. Sect. 132.

And the Author, Printer and Publisher to lose the Property in the Copy, though the Title thereto be registred in *Stationers Hall*; and any Person may freely print and publish the same, paying the Duty, without being liable to a Prosecution.

All Pamphlets must have the Printer's or Publisher's Name printed thereon. *Ibid.* Sect. 126.

Twenty Pounds for every Offence, *ut supra*.

Two or more Justices, residing near the Place where any Pecuniary Forfeiture, not exceeding 20 Pounds, upon this or any of the Acts of Parliament, touching the Duties under the Management of the Commissioners for managing the Duties on stamped Vellum, Parchment and Paper, shall be incurred, to hear and determine the same, within one Year after Seizure made, or Offence committed in a summary Way. And to award and issue out Warrants for levying the Penalties, adjudged on the Offender's Goods, and to cause them to be sold, unless redeemed within six Days, rendering the Overplus. *Ibid.* Sect. 133. *Vide Stat. 5 & 6 W. & M. cap. 21. And 9 Ann. c. 23.*

Q. Whether the Party offending may not be committed (if he has no Goods whereon to levy) till he pay the Penalty.

In their Discretions.

Justices may mitigate Penalties as they shall think fit, the reasonable Costs and Charges of the Officers and Informers being first allowed over and above such Mitigation, and so as it does not reduce the Penalties to less than double the Duties, over and above the Costs and Charges. *Ibid.* Sect. 134.

[Qu. Sess.] Persons aggrieved by the Sentence of two Justices, may appeal to the next Quarter-Sessions, who may examine Witnesses on Oath, and finally determine the same, and issue Warrants to levy. *Ibid.* Sect. 133.

Note, No *Writ* or *Certiorari* lies to supersede Execution or other Proceedings upon any Order made in Pursuance of the above Statute.

Journals, Mercuries and News-papers, printed on one Sheet and Half-Sheet of Paper, shall not for the Future be deemed or taken as Pamphlets, to be entred, and pay only three Shillings for each Impression thereof.

After the 25th of April, 1725, there shall be paid for every Sheet of Paper, on which any Journal, Mercury, or other News-paper whatsoever shall be printed, a Duty of one Penny; and for every Half-Sheet thereof, one Half-penny, during the Term mentioned in the Act 10 *Anna*.

These Duties shall be levied in the same Manner, and subject to the same Penalties, &c. as are contained in the said Act 10 *Anna*, or any other Act relating to those Duties. 11 *Geo. c.*

APPENDIX

Offences.

Stolen Goods.

Penalties.

[One] **T**aking Money or Reward, directly or indirectly, under Pretence, or upon Account of helping any Person to any stolen Goods or Chattels, unless such Person doth apprehend, or cause to be apprehended such Felon who stole the same, and bring him to Trial, and give Evidence against him. Stat. 4 Geo. c. 11. Sect. 4.

Guilty of Felony, and to suffer in the same Manner, as if he had stole such Goods himself.

[Two] Whoever shall discover, apprehend, and prosecute to Conviction of Felony without Benefit of Clergy, any Person for taking Money, or other Reward, directly or indirectly, to help any Person to stolen Goods (such Offender not having apprehended the Felon, who stole the same, and brought him to Trial for the same, and given Evidence against him) upon a Certificate under the Hand and Seal of the two next Justices, shall receive the Sum of 40*l*. to be paid by the Sheriff. Stat. 6 Geo. c. 23. Sect. 9.

Penalty of forty Pounds, to be recovered by Action of Debt, &c. on any Person taking more than five Shillings for a Certificate.

Note, The Reward of 40 Pounds for apprehending and convicting any Person for Burglary, to be paid without any Deduction as aforesaid. Sect. 10.

Offences.

Subornation of Perjury.

Penalties.

[Du. Sect.] **S**uborning a Witness to give Testimony in any Court of Record, concerning any Lands, Goods, Debts, or Damages. Stat. 5 Eliz. c. 9. Sect. 3.

Forty Pounds, and if he has not wherewith to satisfy the same, six Months Imprisonment, without Bail, to stand upon the Pillory in the same or next Market-Town where the Offence was committed, and disabled to give Testimony in any Court of Record, till the Judgment be reversed by Attaint, or otherwise.

Note, One Justice may bind over, or commit the Offender.

Offences.

Sunday.

Penalties.

[One] **P**ersons being present at Bear-baitings, Bull-baitings, Interludes, Common Plays, and any other unlawful Pastimes on the Lord's Day. Stat. 1 Car. 1. c. 1. Sect. 4.

View, Confession, or one Witness.
Prosecution in one Month.

Three Shillings and four Pence for the Poor, to be levied by Distress, &c. in Default, to sit in the Stocks three Hours.

Carrier, Waggoner, Carman, Wainman, or Drover, travelling on the Lord's Day about their respective Business. Stat. 3. Car. 1. c. 1. Sect. 2.

View, Confession, or two Witnesses.
Prosecution in six Months.

Twenty Shillings for every Offence, to be levied and employed, *ut supra*.

Third Part may be allowed to the Prosecutor.

Persons of the Age of 14 Years, and upwards, doing any wordly Labour or Business

Five Shillings to the Poor, to be levied by Distress and Sale; if not able, to be set in the

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APPENDIX.

Offences.

Tanners.

Penalties.

[One] **T**O administer an Oath to Tanners, and Dressers of Hides in England, That they did, within two Days after taking Hide, or Skin, or Pieces thereof, or Vellum, or Parchment, out of Wooze, Mill, Liquor, or other Materials, make a true Entry, with the proper Officer, of the Number and Quality of the Hides, &c. so taken out to be dried. Stat. 9 Ann. c. 11. Sect. 16.

To administer an Oath to Tanners, &c. that they give Notice to the proper Officer two Days before Removal of Hides, &c. Stat. 9 Ann. c. 11. Sect. 16.

[Two] Tanner, or other Person, shaving, or causing to be shaved, Hide or Calf-Skin before tanned, whereby it shall be impaired, or Duty diminished.

Prosecution in three Months.

An Appeal to the next Quarter-Sessions. Stat. 9 Ann. c. 11. Sect. 11.

Every such Hide, or Skin, or the Value forfeited.

One Moiety to the Queen, the other to the Informer.

Justices may mitigate, so as the reasonable Costs and Charges in Prosecution be allowed over and above such Mitigation, so as the Penalty be not reduced to less than one fourth Part. Sect. 37.

To continue for 32 Years.

Vide the Definition of tanned Hides or Skins, Pieces of Hides or Skins, Leather dressed in Oyl, &c. and tawed Leather, in Stat. 9 Ann. c. 11. Sect. 3.

Tanners, Bazil-Tanners, Curriers, Tawers, Spanish Leather-Dressers, and all other Dressers of Hides or Skins, or Pieces of Hides, or Skins, and all Makers of Vellum and Parchment, neglecting to give Notice in Writing to the proper Officer, of their respective Names and Places of Abode, and Tan-houses, Yards, Work-houses, Mills, or other Places for Tanning, Tawing, or Dressing any such Hides, or Skins, or Pieces thereof.

Prosecution and Appeal, *ut supra*. Stat. 9 Ann. c. 11. Sect. 15.

Owners, or Occupiers of Tan-Yards, &c. refusing the proper Officer to enter.

Prosecution and Appeal, *ut supra*. Stat. 9 Ann. c. 11. Sect. 17.

Tanners, Tawers, Curriers, or Dressers of any Hides, or Skins, or Pieces thereof; or any Makers of Vellum or Parchment, using any private Tan-yard, &c. or not giving timely Notice of taking the Hides, &c. out of the Wooze, &c. or Removing, Sending, or Carrying away the same, or any Part thereof; or hiding or concealing any Skins, &c. or causing the same to be hid or concealed.

Prosecution and Appeal, *ut supra*. Stat. 9 Ann. c. 11. Sect. 17.

Tanners, &c. not paying the Duties, with which Hides, Skins, &c. are chargeable.

Send-

Fifty Pounds, one third Part to the Queen, the other two Thirds to the Informer.

Ten Pounds, to be divided, *ut supra*. Mitigation, *ut supra*.

Twenty Pounds, and the Forfeiture of the Skins, &c. or the Value thereof; one Moiety to the Queen, the other to the Informer.

Mitigation, *ut supra*.

Double the Duty.

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APPENDIX

Offences.	Tanners.	Penalties.
Sending, delivering, or carrying out any Hides, &c. before the Duty is paid. Prosecution and Appeal, <i>ut supra</i> . Stat. 9 Ann. c. 11. Sect. 25.		Double the Value of such Hides so delivered, or carried out. To be divided, <i>ut supra</i> . Mitigation, <i>ut supra</i> .
Tanners, &c. not keeping just Scales and Weights, or not permitting Hides, &c. to be weighed, or neglecting to bring the same to the Scale; or to assist at the Weighing, or removing Hides, &c. or causing them to be removed, before the Duties be charged, and the Skins, &c. marked. Prosecution and Appeal, <i>ut supra</i> . Stat. 9 Ann. c. 11. Sect. 26.		Fifty Pounds, to be divided, <i>ut supra</i> . Mitigation, <i>ut supra</i> .
Tanners, &c. not accounting with the proper Officer once in Three Months. Prosecution and Appeal, <i>ut supra</i> . Stat. 9 Ann. c. 11. Sect. 27.		Fifty Pounds, to be divided, <i>ut supra</i> . Mitigation, <i>ut supra</i> .
<i>Note, Collar-makers, Glovers, Bridle-Cutters, and others, who dress any Skins or Hides, or Pieces of Skins or Hides, in Oil, Allom and Salt, or Meal, or with other Ingredients, and who cut and make the same into Wares, are Tawers and Dressers within the Act, and subject to the Penalties and Forfeitures in the same.</i> Stat. 9 Ann. c. 11. Sect. 28.		
Officer taking any Fee or Reward for any Entries, Accounts, Permissions, Certificates, Marks, or Receipts. Prosecution and Appeal, <i>ut supra</i> . Stat. 9 Ann. c. 11. Sect. 35.		Five Pounds to the Party grieved, for every such Offence.
To hear and determine all Offences against the Statute of 1 Jac. 1. c. 22. concerning Tanners, within the Time, and in the Manner, and subject to Mitigation and Appeal, <i>ut supra</i> . Stat. 9 Ann. c. 11. Sect. 36 and 37.		
Relanding, or putting on Shore again, within Great Britain, any Hides, Calves-Skins, Boots, Shoes, Gloves, or other Manufactures of Leather, shipp'd to be exported. Prosecution and Appeal, <i>ut supra</i> . Stat. 9 Ann. c. 11. Sect. 42.		Forfeiture of the same, and the treble Value. One Moiety to the Queen, the other to the Informer. Mitigation, <i>ut supra</i> .
<i>Note, The Judgment of the Justices is final, and no Certiorari to be brought or allowed to remove any the Proceedings of the Justices of Peace, relating to Offences committed against Stat. 9 Ann. c. 11. Ibid. Sect. 47.</i>		
[Du. Sess.] Butcher exercising the Mystery of a Tanner. 1 Jac. 1. c. 22. Sect. 4.		Six Shillings and eight Pence a Day, to be divided. One Third to the King, one to the Prosecutor, and the other to the City, Borough, Town, or Lord of the Liberty, where the Offence is committed.
Persons exercising the Mystery of a Tanner, not having served Seven Years as an Apprentice or hired Servant, except the Widow or Children of a Tanner, and having been brought up in that Profession Four Years, Cutters or Workers of Leather Tanning. 1 Jac. 1. c. 22. Sect. 5.		Forfeit all the Leather they tan, or the Value thereof, to be divided, <i>ut supra</i> .
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APPENDIX.

Offences.	Tanners.	Penalties.
Persons buying rough Hides or Calves-Skins in the Hair, except such as can lawfully tan them. 1 Jac. 1. c. 22. Sect. 7.		Forfeit them, or the just Value, to be divided, <i>ut supra</i> .
Persons forestalling Hides, or buying them other-where than in open Fair or Market. 1 Jac. 1. c. 22. Sect. 7.		Six Shillings and eight Pence a Hide, to be divided, <i>ut supra</i> .
Tanner who over-limes his Hides, or useth in Tanning any Thing save Ash-Bark, Tapwork, Malt, Meal, Lime, Culver-dung or Hen-dung, or suffers them to be frozen, or parched with Fire or Sun; or tans rotten Hides, or works them in other Sort than is by the Statute limited. 1 Jac. 1. c. 22. Sect. 11.		Forfeits every Hide so tann'd, and put to Sale, or the full Value thereof, to be divided, <i>ut supra</i> .
Tanner, who by Mixtures raises any Hide for Sole-Leather not fit for that Use. 1 Jac. 1. c. 22. Sect. 14.		Forfeits it, to be divided, <i>ut supra</i> .
Persons putting to Sale tanned Leather, red and unwrought, but in Fair or Market, unless searched and sealed before, or offering to sell such Leather before it be parched and sealed. 1 Jac. 1. c. 22. Sect. 14.		Six Shillings and 8 Pence a Hide, and for every Dozen of Calf-Skins or Sheep-Skins, 3 s. 4 d. besides the Hides and Skins themselves, or the full Value thereof, to be divided, <i>ut supra</i> .
Persons putting to Sale any Leather, insufficiently tanned or dried. 1 Jac. 1. c. 22. Sect. 15.		Forfeit the Whole, to be divided, <i>ut supra</i> .
Tanner hastening the Tanning of his Leather, by giving it unkind Heats with hot Wooze, or otherwise. 1 Jac. 1. c. 22. Sect. 17.		Ten Pounds, to be divided, <i>ut supra</i> , and to stand upon the Pillory Three Days in the next Market.

Offences.	Tobacco.	Penalties.
[Two] MAY grant a special Warrant to search for, and seize Walnut-Tree-Leaves, Hop-Leaves, &c. cut, mixed, or manufactured to resemble Tobacco, and the Engines, &c. And if seized within Six Miles of any Sea-Port, such Leaves, &c. to be brought to the next Custom-house Warehouse; and if at any greater Distance. Stat. 1 Geo. Seff. 2. c. 46. Sect. 4.		To secure them at the King's Cost, till the Cause of Seizure be determined by the Quarter-Sessions, who are to hear and determine the same at the farthest at the second Quarter-Sessions after Seizure made.
Servants and Labourers employed in Cutting, Colouring, Curing, or Manufacturing any such Leaves, &c. to resemble Tobacco, or making a Mixture thereof, or knowingly vending the same.		After Condemnation, to be openly burnt or destroyed, by Order of Sessions, at the King's Charge.
One Witness. Stat. 1 Geo. c. 46. Sect. 5.		To be committed to the common Gaol, or House of Correction, to hard Labour, not exceeding Six Months, without Bail or Mainprize.

[Qu. Seff.] Two Justices of Peace may, at the Quarter-Sessions, present any Persons for sowing, planting, or making Tobacco; which Presentment is a Conviction in Law; and the Party forfeits 40 s. for every Rod, unless he, having Notice in Writing 10 Days before,

APPENDIX.

Offences.

Tobacco.

Penalties.

fore, shall traverse such Presentment, and find Sureties to prosecute next Quarter-Sessions. Stat. 22 & 23 Car. 2. c. 6. Sect. 3.

Offences.

Tobacco-pipe Clay.

Penalties.

[Du. Sess.] **E**Xporting Tobacco-pipe Clay. Stat. 13 & 14 Car. 2. c. 18. Sect. 7.

Three Shillings a Pound, to be divided between the King and the Prosecutor.

Offences.

Transportation.

Penalties.

[One] **T**O rescue such Felon or Offenders, as are order'd for Transportation; and the Person aiding or assisting them in making their Escape. Stat. 6 Geo. c. 23. Sect. 5.

Felony, without Benefit of Clergy.

A Felon ordered for Transportation, who shall be afterwards at large within the Kingdom of *Great Britain*, without some lawful Cause, before the Expiration of the Term, for which such Felon was order'd to be transported, being lawfully convicted. Stat. 6 Geo. c. 23. Sect. 6.

Felony, without Benefit of Clergy.

And may be tried either in the County where apprehended, or from whence ordered for Transportation.

Certificate of the Clerk of the Peace, containing the Effect and Tenor of the Indictment, and Conviction of such Felon, produced in Court, is a sufficient Proof. Sect. 7.

Vide Smuglers or Runners of Foreign Goods.

[Two] The Lord Mayor of *London*, or one Justice of the Peace of the City of *London*; and in all other Places Two Justices, may allow of Contracts by Persons above 15 and under 21 Years of Age, with Merchants or others, for serving in the Plantations, not exceeding Eight Years. Stat. 4 Geo. c. 11. Sect. 5.

Contracts to be certified to the next Quarter-Sessions, and there registred without Fee, by the Clerk of the Peace.

The Court before whom Felons are convicted, may nominate and appoint, if they shall think fit, Two or more Justices, to contract for the Performance of the Transportation of such Felons, to any of the Colonies and Plantations in *America*: And to order such sufficient Security, as directed by 4 Geo. c. 11. And also to cause such Felons to be delivered by the Gaolers to the Persons contracting for them. Stat. 6 Geo. c. 23. Sect. 2.

Contracts and Security to be certified by the Justices, to the next Court, held for the County, &c. to be filed and kept amongst the Records of such Court.

[Du. Sess.] To order the Treasurer of the County, &c. for which the Court was held, that ordered such Felons to be transported, to pay all such Charges and Expences to such Person or Persons, as shall be employed for the Purposes aforesaid. Stat. 6 Geo. c. 23. Sect. 3.

All Securities for Transportation of Felons to be by Bond in the Name of the Clerk of the

The Monies recovered on such Securities, to the Use of the County, &c. and paid to the

APPENDIX

Offences.	Transportation.	Penalties.
the Peace of the County, &c. which said Clerks of the Peace, and their Successors, shall prosecute such Bonds in their own Names, (to which Purpose they are a Body corporate) and to be paid such Costs, Charges and Expences, as the Quarter-Sessions shall direct, out of the publick Stock, by the Treasurer of the County, &c. Stat. 6 Geo. c. 23. Sect. 4.	the Treasurer, to be Part of the County Stock.	

Note, The Persons contracting, and to whom such Felons are delivered, in Order to be transported; or the Persons directed by the Justices, may carry and secure them in and thro' any County of Great Britain. Stat. 6 Geo. c. 23. Sect. 5.

Offences.	Treasurer of the County.	Penalties.
[Du. Sess.] THE Treasurer (or his Executors, &c.) who hath been negligent to execute his Office, or render an Account. Stat. 43 Eliz. c. 3. Sect. 7.	Five Pounds at least.	
Treasurers wilfully refusing to give Relief. Stat. 43 Eliz. c. 3. Sect. 12.		Fineable, to be levied by Distress and Sale of Goods, by a Warrant of any Two to be appointed by the Rest.

Two Treasurers for the County are to be chosen yearly at *Easter-Sessions*, by the more Part of the Justices, out of such Subsidy-Men as were taxed in the last Tax of Subsidies, at Five Pounds Lands, or Ten Pounds Goods. Stat. 43 Eliz. c. 2. Sect. 14.

Treasurer for the County refusing to execute the Office, distribute Relief, or to account to their Successors, and pay the Monies in their Hands to the Lord Chief Justice of the <i>King's Bench</i> , and the Knight Marshal by equal Portions. Stat. 43 Eliz. c. 2. Sect. 16.	Three Pounds at least, to be levied by Distress and Sale, and to be prosecuted by any Two Justices, authorized by the Rest.
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Offences.	Trophy-Money.	Penalties.
[Three] TO certify under their Hands and Seals, the Examination, Stating, and Allowance by the Quarter-Sessions, of <i>Trophy-Money</i> raised, levied and collected for any precedent Year. Stat. 12 Ann. Sess. 1. c. 10. Sect. 2. and Sess. 2. c. 8. Sect. 2.		

[Du. Sess.] The Lieutenantcy shall not issue out any Warrants for levying *Trophy-Money*, till the *Justices of Peace*, or the major Part of them at their Quarter-Sessions, shall have examined, stated, and allowed the Accounts of the *Trophy-Money* last raised, levied, and collected for any preceding Year, and certified such Examination of the said Accounts under the Hands and Seals of Three or more of them, to the respective Lieutenants, or their Deputies. Stat. 12 Ann. Sess. 1. c. 10. Sect. 2. And Sess. 2. c. 8. Sect. 2.

Offences.	Tythes.	Penalties.
[One] Persons substracting, or withholding small Tythes. Stat. 7 & 8 W. 3. c. 6. Sect. 3.	Where	Shall levy the Sum adjudged by Two Justices, upon their Certificate, where the Party

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Offences.

Tythes.

Penalties.

Where Two Justices have adjudged what Sum any *Quaker* is to pay for great or small Tythes. Stat. 7 & 8 W. 3. c. 6. Sect. 3.

[Two] Defendants in the Ecclesiastical Court, against whom the Judge complains for any Contumacy or Misdemeanour, in any Suit there depending for Tythes. Stat. 27 H. 8. c. 20. Sect. 1. 2 & 3 Ed. 6. c. 13. Sect. 13. *Quorum* 1.

This extends not to *London*.

Persons after a Sentence for Tythes in the Ecclesiastical Court, refusing to pay Tythes, or Sums of Money adjudged, upon a Certificate thereof from the Judge. Stat. 32 H. 8. c. 7. Sect. 4. 2 & 3 Ed. 6. c. 13. Sect. 1. *Quorum* 1.

This extends not to *London*.

Upon Complaint made, within Two Years, against any Person for Substraction, or withholding of small Tythes, under Hand and Seal, to summon the Person, and after Appearance, or Default (Summons being proved) to examine and determine the same; by Evidence upon Oath, and in Writing under Hand and Seal, to adjudge such reasonable Allowance for Tythes and Costs, not exceeding 10*s*. as they shall think fit, except in Case of Prescription, or *Modus Decimandi*. Stat. 7 & 8 W. 3. c. 6. Sect. 2.

Persons refusing or neglecting for 10 Days after Notice to pay the Sum adjudged for Substraction of Tythes.

The Sum to be levied by Distress, and Sale in Three Days after the Distress, unless paid before: All Charges to be deducted out of the Money raised by the Sale.

Where any Person makes a false and vexatious Complaint for Substraction, or withholding of small Tythes, to give Costs not exceeding 10*s*. to the Party prosecuted.

Neither of the Justices, who put this Act in Execution, must be Patron. Stat. 7 & 8 W. 3. c. 6. Sect. 12.

Quaker refusing to pay, or compound for great or small Tythes, or to pay any Church-Rates. Stat. 7 & 8 W. 3. c. 34. Sect. 4.

To be convened before Two Justices, who are to examine, upon Oath, the Truth and Justice of the Complaint, and by Order under their Hands and Seals direct the Payment thereof, not exceeding 10*l*.

If not Patrons, or interested in the Tythes, are on Complaint of any Parson, &c. to summon in Writing *Quakers*, and determine on Appearance, or in Default, and Summons proved upon Oath, to hear and determine the Complaint, and make such Order as directed by Stat. 7 & 8 W. 3. And also to order such Costs and Charges, as they shall think reasonable, not exceeding Ten Shillings. Stat. 1 Geo. c. 6. Sect. 2.

An Appeal lies.

[*Qu. Sect.*] May reverse the Judgment of Two Justices, relating to Tythes on an Appeal; but if they affirm it, are to give Costs against the Appellant, to be levied, as provided by 7 & 8 W. 3. c. 34. unless the Title of such Tythes, &c. be in Question. 1 Geo. c. 6. Sect. 2.

APPENDIX

Offences.

Vagabonds and Vagrants.

Penalties.

[One] **M**AY reward those who apprehend Rogues, Vagabonds, &c. and bring them before him, by granting them a Warrant under Hand and Seal to the Constable, &c. of such Parish, where such Rogue, &c. passed unapprehended, to pay 2 s. for every Vagabond, on Pain of being proceeded against according to 39 *Eliz. c. 4.* and 1 *Jac. 1. c. 1.* and out of the Money forfeited, by 1 *Jac.* to allow 2 s. Stat. 13 & 14 *Car. 2. c. 12. Sect. 16.*

A Justice of one County may certify to a Justice of another.

Note, The Statute of 39 *Eliz.* and 1 *Jac. 1.* are repealed by Stat. 12 *Ann. c. 23.* but the Substance thereof re-enacted. *Vide post.*

If the Constable refuseth to obey the Warrant above-mentioned. Stat. 13 & 14 *Car. 2. c. 12. Sect. 17.*

To cause such Constable to pay to such Persons as apprehend Vagabonds, &c. 10 s. or so much thereof, for their Expences and Loss of Time, as he thinks fit, which he forfeited by 39 *Eliz.*

Vagabonds, Beggars, &c. Stat. 11 & 12 *W. 3. c. 18. Sect. 1.* 1 *Ann. c. 13. Sect. 2. Sect. 6.*

To be taken by the Constable, and carried before the next Justice, to be carefully examined, and either sent to the House of Correction, or to such Town of the next County, as he shall think most proper, giving the Constable a Certificate of the Persons so ordered to be punished, or conveyed, with the Manner how, and when, and whence conveyed, and with what Assistance; and to tax an Allowance for Pains and Trouble, according to the Rate, set in *Easter Quarter-Sessions* yearly.

Constables not apprehending Vagabonds, wandering Beggars, &c. Stat. 11 & 12 *W. 3. c. 18. Sect. 4.* 1 *Ann. c. 13. Sect. 2. Sect. 8.* One Witness.

Twenty Shillings, to be levied by Distress and Sale.

One Fourth Part to the Informer, the other Three to the Poor.

High Constable paying Money for passing Vagrants, without the Petty Constable's producing a Receipt for such Vagrants. Stat. 1 *Ann. Sect. 2. c. 13. Sect. 8.*

Twenty Shillings, to be levied by Distress and Sale.

To send such as are Vagrants, within the Stat. 39 *Eliz. c. 4.* into the Sea-Service. Stat. 2 *Ann. c. 6. Sect. 16.*

Parent-Gatherers, or Collectors for Prisons and Gaols, *wandering for that Purpose*; Fencers, Bearwards, Common Players of Interludes, Minstrels, Jugglers, *though not wandering*; Gypsies or Egyptians, or wandering in their Habit or Form; Pretenders to Physiognomy or Palmistry, or like crafty Science or Fortune-telling, or like fantastical Imaginations; Users of any subtle Craft, or unlawful Games or Plays, able-bodied Persons, who run away and leave their Wives and Children to the Parish, and not having otherwise to maintain themselves, use *Loitering*, and *refuse to work* for usual and common Wages; and other idle Persons,

Are Rogues and Vagabonds, and may be apprehended by the Constable or other Officer, Inhabitant, or any other there being, and conveyed to a Justice of the same County, City, Borough, or Town Corporate, in or near the Parish or Place, where so apprehended, and may be punished by being *whipp'd till bloody, &c. ut infra.*

Con-

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wandering abroad, and begging, excepting Soldiers, Mariners, &c. licensed by a Testimonial under the Hand and Seal of a Justice, mentioning the Time and Place of their Landing, and to which they are to pass, during such Passing only. Stat. 12 Ann. Sess. 2. c. 23. Sect. 1.

To charge Inhabitants, &c. to apprehend and deliver to the Constable, or to carry before a Justice, where no Constable, &c. is found, any Rogue or Vagabond, resorting to any House to beg. Stat. 12 Ann. Sess. 2. c. 23. Sect. 2.

To reward any Person so apprehending, &c. by ordering by his Warrant the Constable, &c. where the Rogue, &c. was found begging, and passed unapprehended, to pay him 2s. for apprehending, &c. *Ibid.* Sect. 2.

To examine Rogues, &c. apprehended by the Constable, or others, or on a privy Search made, touching their Condition and Circumstances, Places of Abode, and Birth, &c. and transmit the same to the Quarter-Sessions. *Ibid.* Sect. 4.

To convey Rogues, &c. by a special Pass, to the Places of their Birth, &c. or if under 14, to the Abode of their Father or Mother; or otherwise to the Place, where last found begging, and passing unapprehended. *Ibid.* Sect. 4.

If the Justice shall adjudge such Person an *incorrigible Rogue*, he may commit him to the House of Correction, or County-Gaol, to hard Labour, till the Quarter-Sessions. And Rogues, &c. refusing to be examined, or on Examination giving a false Account of themselves, their Birth, last Settlement, &c. are to be deemed *incorrigible Rogues*, of which the Justice is to inform them, during Examination. *Ibid.* Sect. 9.

Not to pass any Rogue, &c. to the Place of Birth before Examination; nor after, if a Place of *legal Settlement* can be found. *Ibid.* Sect. 10.

Shall with the *Pass* deliver to the Constable a Certificate, ascertaining how they shall be passed, and whither, and in what Time, and what Allowances to the Constables or Officer, who is to convey and deliver them to the Constable of the next Place with the *Pass*, taking a Receipt for the same on the Back of the Certificate. And the second Constable, &c. is to apply to another Justice, who is to cause such Rogue to be whipp'd, or sent to the House of Correction, and afterwards order him to be conveyed with the same, and a new Certificate to the next County or Precinct, &c.

N. B. No Constable, &c. is obliged to receive such Rogue, unless it appear he hath been whipp'd, &c. except as in the Act. *Ibid.* Sect. 18.

Constables, Officers or Inhabitants refusing, and convicted by Oath of one Witness before a Justice, forfeit 10s. to the Poor, levied by Distress, &c. on a Warrant of one Justice.

On Constables, &c. refusing Payment, by Warrant to levy by Distress and Sale of such Constables Goods 20s. and allow the Person 2s. out of the same, and such Recompence for his Trouble, Loss of Time and Expenses, as he shall think fit.

On Forfeiture of 5l. for every Offence, to be recovered by Action of Debt, &c.

Petty Constables, &c. counterfeiting a Certificate, or not conveying, &c. forfeit Twenty Pounds, besides the Sum so fraudulently taken, half to the Poor, and half to the Informer, to be levied by Distress, &c. on Warrant of one Justice.

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May examine Constables and Officers on Oath, touching such Conveying, &c. and to whom he delivered the Person conveyed. *Ibid.* Sect. 19.

Refusing to be examined, or neglecting their Duty, they forfeit the Sums entitled to by the Certificate.

May send to the House of Correction to hard Labour a Rogue, who being passed, *ut supra*, refuseth to work, or undertake some Service, or Employment in the Parish, or Place, where conveyed. *Ibid.* Sect. 20.

And if the Parish shall not employ him, but encourage, or voluntarily permit him to escape, the Charge of Re-apprehending him, &c. may be computed and levied by one Justice's Warrant on the Constables, Churchwardens, &c. of the said Parish by Distress, &c.

Note, If the Parish in Default be in another County, the said Justice's Warrant (ascertaining the Charge) is to be brought to a Justice of that County, who is to levy it, *ut supra*, to be paid for the Benefit of the County, or Place, where the Charge was; and the Constables, &c. on whom levied, may put the same in their Rates, to be allowed by the Inhabitants of the Parish, or Place in Default. *Ibid.*

A Rogue conveyed and passed as aforesaid, and again wandering, &c. one Justice may on Proof thereof. *Ibid.*

Send him to the House of Correction, to hard Labour, till the Quarter-Sessions. *Vide post.*

A Vagrant having no legal Settlement, or found a common Beggar for two Years, or a dangerous and incorrigible Rogue.

May be bound an Apprentice for seven Years, and the Master may send him to the Plantations, &c. but must give him a Recognisance, not to sell him to any Alien.

By Confession, or one Witness. Stat. 12 Ann. Sess. 2. c. 23. Sect. 21.

An Appeal lies to the Quarter-Sessions.

Constables, &c. on Complaint of two Inhabitants, may remove loose, idle, and disorderly Persons, Blind, Lame, &c. from Begging in the Streets, &c. *Ibid.* Sect. 24.

And if they refuse to depart, or offend a second Time, may (by a Justice's Warrant) cause them to be whipped till bloody.

Constables, &c. neglecting or refusing so to do, or causing to be done; on Oath thereof within 24 Hours, by two Witnesses, before one Justice. *Ibid.*

Forfeit 10s. to the Poor, to be levied by such Justice's Warrant by Distress, &c. *Vide infra.*

Masters or Commanders of Ships, bringing from Ireland, Isles of Jersey, Guernsey, Scilly, or Plantations, any Rogue, Vagabond, or Beggar, being born there, and wandering, begging, or disordering himself here.

Forfeit 5l. for every Rogue, &c. so brought, besides the Charges of Apprehending and Re-conveying; both which the Justice, on the Constable's Oath of the Quantum, &c. is by Order under Hand and Seal to direct to be paid; and if not paid on Demand, by like Warrant to levy it by Distress, &c. of the Ship, or Goods therein, while within his Jurisdiction.

Note, The Constable, &c. where found wandering, &c. may apprehend him, and cause him to be whipped, and reconveyed. *Ibid.* Sect. 27.

Note, If the Ship be gone out of the Justice's Jurisdiction, the said Order may be removed by *Certiorari*, and filed in B. R. and the Judges there are to direct Process for Arresting the Ship, until the Money mentioned in the Order, and the Charge of the Process are fully satisfied, or else levy the said Money by *Capias*, *Fi. Fa.* or *Elegit*, against the said Master or Owner. But such Order may be traversed on giving Security of 50l. to answer the Costs and Charges, if determined against him. *Ibid.*

Masters of Ships bound for Ireland, or Isles aforesaid, may by a Justice's Warrant be compelled to take on Board, and convey thither such Vagrants named in the Warrant, as have been settled there, the Constable, &c. who serves

Refusing to receive on Board, or to transport such Vagrant, or to endorse, and sign such Receipt, forfeits 50l. to the Poor, to be levied by Distress or Sale of the Ship, or Goods therein, by Warrant of

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serves the Warrant, paying him so much for each Vagrant, as the Quarter-Sessions shall appoint, and the Master to sign a Receipt for the Money paid, and Vagrants delivered, on Back of the Warrant, which being produced to the Justice, who made it, and he allowing the same under his Hand, the Money so paid shall be repaid by the County in such Manner, as by this Act the Money for conveying Vagrants from County to County is to be paid. Stat. 12 Ann. Sess. 2. c. 23. Sect. 29.

a Justice, returning the *Overplus* after the said Penalty and Charges of Levying paid.

Constables and other Officers failing of their Duty, or being remiss or negligent therein, or any other disturbing or hindring the Execution of this Act; or rescuing any Person apprehended; or assisting his Escape, and convicted by View of the Justice, or one Witness. Stat. 12 Ann. Sess. 2. c. 23. Sect. 30.

Forfeit for every such Offence 20s. to the Poor, to be levied by Distress and Sale of Goods on a Justice's Warrant, returning the *Overplus* after the Penalty and Charges of Distress.

[Two] Persons running away, and leaving their Charge to the Parish. Stat. 1 Jac. 1. c. 4. Sect. 8.

To be punished as incorrigible Rogues.

Two Witnesses.

Persons, who threaten to run away, and leave their Charge to the Parish. *Ibid.*

To be sent to the House of Correction, there to be punished as sturdy Rogues (unless they put in sufficient Sureties, to discharge the Parish) and not to be delivered, but at a Meeting of the Justices, or in open Sessions.

Two Witnesses.

Note, All Fines set by Virtue of Stat. 7. Jac. 1. c. 4. are to be paid to, and accounted for, by the *Treasurer of the County*. Stat. 7 Jac. 1. c. 4. Sect. 9.

Two or more to meet before every Quarter-Sessions, and by Warrant to command the Constables of every Hundred (who shall be assisted with sufficient Men) to make a general *privy Search* in one Night thro' their several Limits for *Rogues and Vagabonds*, and to bring them before any one Justice. 12 Ann. Sess. 2. c. 23. Sect. 3.

[Qu. Sess.] At Easter-Sessions yearly, to ascertain and set down the several Rates, that shall for the Year ensuing be allowed for Maintaining, Conveying and Carrying of Vagrants, and Copies to be delivered to the Justices by the Clerk of the Peace *gratis*. Stat. 1 Ann. Sess. 2. c. 13. Sect. 6.

To take Care about raising Monies for passing Vagrants, as Monies are raised for Repair of County-Bridges, and to see the Money applied; but no Order to be made for Payment, till the *Treasurer* has Money in his Hands. Stat. 5 Ann. c. 32. Sect. 2.

To order a dangerous and incorrigible Rogue to be whipped three Market-Days, and then recommitted to the House of Correction, or Gaol, to hard Labour, for what Time they think meet. And *Note*, A voluntary Escape afterwards out of the said House or Gaol, is *Felony*. Stat. 12 Ann. Sess. 2. c. 23. Sect. 9.

To appoint Rates or Allowances *per Mile* for passing Rogues, &c. and to make other Orders and Directions therein, at Discretion. Stat. 12 Ann. Sess. 2. c. 23. Sect. 15.

To raise Money for that Purpose, as for County-Gaols and Bridges, to be paid quarterly to the chief Constables, so as they have a quarterly Payment before-hand, who are to account

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<i>Offences.</i>	Magabonds and Vagrants.	<i>Penalties.</i>
count half Yearly, and pay Petty Constables, &c. such Rates, as are allowed them by a Justice's Certificate. <i>Ibid.</i> Sect. 16.		

May enquire and punish Defaults or Neglects of Officers, &c. of any Parish or Place, to which a Rogue shall be brought, in permitting or encouraging their Escape or Departure, after they are passed thither. *Ibid.* Sect. 21.

May adjudge such, as wander after they are so conveyed and passed, and sent to the House of Correction, dangerous and incorrigible Rogues, and order them to be punished accordingly, if they cannot give Security for their good Behaviour for a Year, to be approved by the Sessions. 12 Ann. Seff. 2. c. 23. Sect. 21.

A Person adjudged a Vagrant, or common Beggar for two Years, or an incorrigible Rogue, or bound Apprentice, or ordered to be sent to the Plantations, may appeal to the Quarter-Sessions, and their Determination to be final. Stat. 12 Ann. Seff. 2. c. 23. Sect. 23.

To appoint Rates for Masters of Ships, for reconveying Rogues, &c. brought from Ireland, Isles of Man, Jersey, Guernsey, Scilly, or Plantations, at so much an Head for each; and also like Rates for conveying Vagrants to Ireland, or the said Islands, if their last Settlement was there. *Ibid.* Sect. 29.

<i>Offences.</i>	Vellum and Parchment.	<i>Penalties.</i>
[One] TO take the Affidavit of the Maker of Paper, Vellum, Parchment and Pasteboard, what the Value of the same is, for which he is to pay 20l. per Cent. Tax. Stat. 8 & 9 W. 3. c. 7.		

[Two] Where Complaint is made by Owner of any Papers, Parchment, Vellum, or Pasteboard, that the same hath been seized for any Offence against the Act 8 & 9 W. 3. c. 7. they are to summon Witnesses, and examine the Cause of the Seizure upon Oath, and to hear and determine the Matter between the Owner and the Seisor. *Ibid.*

Complaint must be made in eight Days after the Seizure is made.

Note, An Appeal lies to the Quarter-Sessions.

<i>Offences.</i>	Under-Sheriffs.	<i>Penalties.</i>
[Two] EVery Under-Sheriff before he intermeddles with his Office, not taking the Oath of Supremacy, and also the following Oath. Stat. 27 Eliz. c. 12. Sect. 2.		
<i>Quor. 1.</i>	Forfeits 40 Pounds, to be divided between the King and Prosecutor, and treble Damages to the Party grieved, if he commits any Act contrary to his Duty.	

I A. B. will not use, nor exercise the Office of under-Sheriff corruptly, during the Time that I shall remain therein; neither shall or will accept, receive, or take by any Colour, Means or Device whatsoever, or consent to the Taking of any manner of Fee or Reward of any Person or Persons, for the Impanelling or Return of any Inquest, Jury, or Tales, in any Court of Record for the King, or betwixt Party and Party, above two Shillings, or the Value thereof, and such Fees as are allowed and appointed for the same by the Laws and Statutes of this Realm, but will according to my Power, truly and indifferently, with convenient Speed impanel all Jurors, and return all such Writ or Writs touching the same, as shall appertain to be done by my Duty or Office, during the Time I shall remain in the said Office.

So help me God.

Bailiffs of Franchises, Deputies, or Clerk of a Sheriff, or Under-Sheriffs intermeddling with their several Offices, before they have taken the said Oaths. <i>Ibid.</i>	Forfeit 40 Pounds, ut supra.
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[Qu. Sess.]

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<i>Offences.</i>	<i>Under-Sheriffs.</i>	<i>Penalties.</i>
[Du. Sess.] Have Power to hear and determine the Defaults and Offences aforesaid.		
<i>Ibid.</i>		

See Sheriffs.

<i>Offences.</i>	<i>Wages.</i>	<i>Penalties.</i>
[Two] Givers of greater Wages, than are set by the Justices in <i>Easter-Sessions</i> Yearly. Stat. 5 <i>Eliz.</i> c. 4. Sect. 18.		

Five Pounds, and ten Days Imprisonment, without Bail.

Takers of more Wages, than are set by the Justices. Stat. 5 *Eliz.* c. 4. Sect. 19.

One and twenty Days Imprisonment, without Bail.

To hear and determine all Wages, Demands, Frauds, and Defaults of Labourers in the *Woollen, Linen, Fustian, Cotton, and Iron Manufactures*, for, or concerning any Work done in the same Manufactures. Stat. 1 *Ann.* Sess. 2. c. 18. Sect. 4.

Witnesses to be summoned. An Appeal lies to the Quarter-Sessions.

Vide Title *Servants*.

Wages of the Knights of the Shire.

[Du. Sess.] Sheriffs, Coroners, Chief Constables, and Bailiffs, not being present at assessing the Wages of Knights of the Shire, which is 4s. a Day. Stat. 23 *H. 6.* c. 11. Sect. 1.

Forty Shillings.

The Sheriff, or other Officer, who levies more, than is assessed for the Knights of the Shires Wages. Stat. 23 *H. 6.* c. 11. Sect. 1.

Twenty Pounds to the King, ten Pounds to the Prosecutor.

Wages of Burgeses.

[Two] To tax every City and Borough in the several Counties in *Wales*, where they inhabited respectively, towards the Wages of the Burgeses, which is 2s. a Day. Stat. 35 *H. 8.* c. 11. Sect. 4.

<i>Offences.</i>	<i>Watchman.</i>	<i>Penalties.</i>
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[Two] TO certify that a Watchman, or other Person, endeavouring to apprehend a Burglar, or House-breaker, was killed, which entitles the Executors or Administrators of the Person killed to forty Pounds. Stat. 5 *Ann.* c. 31. Sect. 2.

<i>Offences.</i>	<i>Weights and Measures.</i>	<i>Penalties.</i>
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[One] ONE selling, buying or keeping any Weight, or Measure, which is not according to the Standard of the *Exchequer*. Stat. 16 *Car. 1.* c. 19. Sect. 2.
One Witness.

Five Shillings for the Poor, to be levied by Distress and Sale; in Default of Distress to be committed till Payment.

[Two] Clerk of the Market, or any other Officer, who seals any Weight or Measure, not agreeable to the Standard, or refusing to seal

Five Pounds for the Poor, to be levied, *ut supra*.

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Weights and Measures.

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seal such as are agreeable thereto. Stat. 16 Car. 1. c. 19. Sect. 4.
One Witness.

If they take any other Fine, Fee, Reward, or Sum of Money, than are allowed by Statute or ancient Custom, for Signing or examining Weights and Measures, or otherwise misdemean themselves. Stat. 16 Car. 1. c. 19 Sect. 5.
One Witness.

Selling Corn or Salt by other Bushel, or Measure, than according to the Standard struck even by the Brim. Stat. 22. Car. 2. c. 8. Sect. 2.

Selling or buying Corn without Measuring, or in other Manner, than according to 22 Car. 2. c. 8. and that without shaking the Measure by the Buyer. Stat. 22 & 23 Car. 2. c. 12. Sect. 2.

The Sub-Commissioners, or Collectors of the Excise, not providing or procuring within their respective Circuits or Divisions, a substantial Ale-Quart and Ale-Pint, Winchester Measure. Stat. 11 & 12 W. 3. c. 15. Sect. 3.

The Mayor or Chief Officer of every City, Town Corporate, Borough, or Market-Town, neglecting, or refusing, upon Request to him made, to stamp and mark Ale-Quart, and Ale-Pint. Stat. 11 & 12 W. 3. c. 15 Sect. 5.

One or more Witnesses.

Prosecution to be within 30 Days.

Note, This Act extends not to the Universities, by Stat. 12 & 13 W. 3. c. 11. Sect. 19.

Selling in any other Water-Measure, than is according to Stat. 1. Ann. Sess. 1. c. 15. Sect. 1.

One Witness.

Note, this extends not to London.

[Two] Persons buying and selling with any other Weights and Measures than such as are marked, except on Shipboard. Stat. 11. H. 7. c. 4. Sect. 12. Quor. 1.

[Qu. Sess.] The King's Purveyor, or any other buying or taking any Corn by any other Measure, than 8 Bushels striked for the Quarter. Stat. 1. H. 5. c. 10. Sect. 2.

Importing or making any Tun of Wine less than 252 Gallons English Measure, the Pipe 126, the Barrel of Herrings and Eels

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First Offence 5*l.* second 10*l.* and 20*l.* for every other, for the Poor, to be levied, *ut supra.*

Forty Shillings, to be levied by Distress and Sale.

Besides the Penalties of the former Act, all the Corn or Salt, or the Value thereof, forfeited to the Person complaining.

Five Pounds, to be levied and employed, *ut supra.*

Five Pounds, to be levied and employed, *ut supra.*

Ten Shillings, to be levied by Distress and Sale.

One Half to the Informer, the other to the Poor.

First Offence 6*s.* 8*d.* Second 13*s.* 4*d.* and Pillory; and the Weights and Measures to be broke, and burnt.

Five Pounds to the King, and as much to the Party grieved, and a Year's Imprisonment.

Forfeits the Commodities therein contained to the Lord of the Town, where they are found; the Prosecutor to have the fourth Part.

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30 Gallons, the Butt of Salmon 84 Gallons. Stat. 2 H. 6. c. 11. Sect. 3, 4.

Every City, Borough, and Town within *England*, that has not a common Balance, with common Weights sealed, according to the Standard of the *Exchequer*, at the Costs of the City, &c. in the Keeping of the Head Officer, or Constable there. Stat. 8 H. 6. c. 5. Sect. 9.

In every City, Borough, and Town, there shall be a common Bushel sealed. Stat. 11 H. 6. c. 8. Sect. 10.

Measures and Weights of Brasses shall be sent to every City and Borough, there to be kept, as their Treasure, according to which all Measures and Weights in every County shall be reformed. Stat. 11 H. 7. c. 4.

The Mayor, or Chief Officer, in Cities and Boroughs, shall have a special Mark, wherewith he shall seal the Measures and Weights, and shall take for Sealing a Bushel one Penny, every other Measure an Half-penny; 100 Weight one Penny, half 100 an Half-penny, every less Weight a Farthing, refusing or delaying to Seal, or doing any Thing contrary to Stat. 11 H. 7. c. 4.

Justices of the Quarter-Sessions are to give in Charge the Statute for ascertaining the Measures of Ale and Beer. Stat. 11 & 12 W. 3. c. 15. Sect. 9.

The City forfeits 10*l.* to the King, the Borough 5*l.* and every other Town 40*s.* The Inhabitants to weigh *Gratis*. Foreigner to pay for under 40*lb.* a Farthing, for between 40 and 100*lb.* a Half-penny; for between 100 and 1000*lb.* one Penny, towards maintaining the Weights.

Restrained to Market-Towns, by Stat. 11 H. 7. c. 4.

Upon the Penalties in 8 H. 6. c. 5.

Forty Shillings, to be divided between the King and the Party grieved.

Offences.

Windows.

Penalties.

[Two] TO put in Execution the Statute of 7 & 8 W. 3. for laying a Duty on Houses; and also 8 & 9 W. 3. c. 20. and 1 Ann. c. 13. and 5 Ann. c. 13. and 7 Ann. c. 7. concerning the same Duty. Stat. 8 Ann. c. 4.

[Three] May annually appoint two such Persons, as they shall think able, and responsible to be Collectors of the Duties on Houses, whether the Names be or be not presented by the preceding Collectors. Stat. 6 Geo. c. 21 Sect. 59.

Where there shall be any Arrears of the Duty on Houses, by the Failure of any Collector, for which any Parish or Place shall be answerable, to cause such Arrears to be raised by Re-assessment, and to be paid to the Receiver General, or into the Exchequer. *Ibid.*

To be levied by such Ways and Means, as the Duties on Houses are raised and levied.

Offences.

Wood.

Penalties.

[One] Persons suspected for having or conveying any Wood, Under-wood, Poles

First Offence, Convicts within 43 Eliz. c. 7. and accordingly punished; and shall make such

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Offences.

Poles or young Trees, Bark or Bast of Trees, or any Gates, Stiles, Posts, Pales, Rails, Hedge-wood, Broom or Furze, found by a Search-Warrant, and can give no good Account how they came by the same; or if they do not, in convenient Time, produce the Person, of whom they bought the same, or some Witness to prove Sale on Oath, Constables or any other Person may apprehend them. Stat. 15 Car. 2. c. 2. Sect. 3.

See 43 Eliz. c. 7. in Title *Ditchards*.

Maliciously setting on Fire, or burning Wood, Under-wood, or Coppice. Stat. 1 Geo. c. 48. Sect. 4.

Wood.

such Recompence, and in such Time, as Justice shall appoint; and a Sum not exceeding 10s. as Justice shall direct for the Poor; in Default to be committed to the House of Correction, not to exceed a Month; or be whipped.

Second Offence, To be sent to the House of Correction for a Month, to be kept to hard Labour.

Third, to be deemed incorrigible Rogues.

Penalties.

Felony.

[Two] When appointed by the Sessions, shall summon twelve Commoners to set out the fourth Part of Woods, or Coppices, where they have Common, for the Lord, Owner of the Soil, to fell, or cut down. Stat. 35 H. 8. c. 17. Sect. 7.

If any Person shall either *by Day or Night*, maliciously and in a clandestine and private Manner, cut, take, destroy, break, throw down, bark, pluck up, burn, deface, spoil, or carry away any Wood-Springs, or Springs of Wood, Trees, Poles, Wood, Tops of Trees, Under-woods, or Coppice-woods, Thorns, or Quicksets, without the Consent of the Owner, or Person entrusted with the Care and Custody thereof; or shall break open, throw down, level, or destroy any Hedges, Gates, Posts, Stiles, Railings, Walls, Fences, Dikes, Ditches, Banks, or other Inclosures of Woods, Wood-grounds, Parks, Chases or Coppices, Plantations, Timber-Trees, Fruit-Trees, or other Trees, Thorns, or Quicksets. Stat. 6 Geo. c. 16. Sect. 1.

Lords of Manors, Owners and Proprietors, that are damaged, shall recover such Damages against the Parish, as the Stat. 13 Ed. 1 directs, if the Parish do not convict the Offender in six Months.

May upon Complaint of any Inhabitant of the Parish, where Wood, Wood-Springs, &c. are in a riotous, open, tumultuous, or in a secret and clandestine Manner, forcibly or wrongfully, and without Consent of the Proprietor, &c. cut down, destroyed, broke, barked, thrown down, burned, took, defaced, spoiled, or carried away: Or where any Hedges, Gates, Posts, Stiles, Rails, Fences, Ditches, Banks, or Inclosures are maliciously broke open, thrown down, levelled, or destroyed, cause Offenders to be apprehended, if convicted. Stat. 6 Geo. c. 16. Sect. 2.

Liabie to the Penalties and Punishments in the Stat. 1 Geo. Sess. 2. c. 48.

Or Justices in open Sessions, upon Complaint of any Inhabitant of the Parish where Timber, Trees, &c. are maliciously cut, &c. may cause the Offenders to be apprehended, and finally hear, determine, and adjudge such

Commit them to the House of Correction to hard Labour, for 3 Months, without Bail; and to be whipped once a Month in the next Market-Town, on the Market-Day, between 11 and 2. And not to be discharged, till

APPENDIX

such Offenders; and after Conviction. Stat. 1 Geo. c. 48. Sect. 2.

till Security given for their good Behaviour for two Years, Sect. 3. Where there is no House of Correction, to be committed to the common Gaol for 4 Months, and to be whipped by the common Hangman once a Month.

Offences.

Wool.

Penalties.

[Du. Sess.] **P**ersons pressing together with Scrues, Presses, or other Engines into any Sack, Bag, &c. or putting or pressing any Wool or Tarn made of Wool, into any Cask or Vessel, or causing to be laid near the Shoar, or Coasts of the Sea, or any navigable River; or into any House or Place adjoining, any Wool, Wool-fells, or Yarn made of Wool, to export the same. Stat. 13 & 14 Car. 2. c. 18. Sect. 7.

Forfeit the same, or to the Value, to be divided between the King and the Prosecutor.

Conveying of Packs, Bags, or Casks of Wool, &c. to or from any Place in England, &c. but at seasonable Times, viz. from March 1. to September 29, between the Hours of 4 in the Morning and 8 in the Evening, and from September 29. to March 1. between 7 in the Morning and 5 in the Evening. Stat. 13 & 14 Car. 2. c. 18. Sect. 9.

The Loss of all such Goods, or the Value, to be divided, *ut supra*.

The Transportation or Conveying the Wool, &c. mentioned in Stat. 13 & 14 Car. 2. c. 18. Sect. 11.

A common Nuisance.

See Title **Cloth.**

Offences.

Words spoke against the Queen's Title.

Penalties.

[One] **T**O take the Information of Words spoken against the Queen's Title to the Crown, &c. in three Days after they were spoken, but not after, Stat. 4 Ann. c. 8. Sect. 3. 6 Ann. c. 7. Sect. 3.

Two Witnesses.

Offences.

Wrecks.

Penalties.

[One] **O**wner of, or Captain, Master, Mariner or other Officer, belonging to any Ship, who shall wilfully cast away, burn, or otherwise destroy the Ship, of which he is the Owner, or to which he belongeth, or in any Wise directing or procuring the same to be done, if to the Prejudice of Persons under writing Policies of Insurance, or Merchants loading Goods thereon. Stat. 4 Geo. c. 12. Sect. 3.

To suffer Death.

Note, The Stat. 12 Ann. Sess. 2. c. 18. Enforced and made perpetual by 4 Geo. c. 12. Sect. 1. See **Ships.**

Offences.

Wrought Plate.

Penalties.

[One] **E**very Officer, for the Duties on Wrought Plate or Manufactures of Silver, who shall be empowered to make a Charge on the Maker or Worker of Plate, &c. shall in the first Place be sworn for the due and faithful Execution of his Office by any Justice of the Peace, who shall give such Officer a Certificate thereof. Stat. 6 Geo. c. 11. Sect. 11.

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